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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 238.

ELIZA ADAMS, JOHN D. ADAMS, REMILLISON ADAMS, ANDREW J. BARNES, MOSES BARNES, BENJAMIN BARNES, SARAH VINSON, BENSON BARNES, MATTIE SHROPSHIRE, PATIENCE LIGHTFOOT AND MARTHA HARDY, APPELLANTS,

vs.

A. C. Riley, Assignee, vc substituted for WILLIAM E. COLLIER, ASSIGNEE OF BENJAMIN B. BARNES, A BANKRUPT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED MARCH 22, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 238.

ELIZA ADAMS, JOHN D. ADAMS, REMILLISON ADAMS, ANDREW J. BARNES, MOSES BARNES, BENJAMIN BARNES, SARAH VINSON, BENSON BARNES, MATTIE SHROPSHIRE, PATIENCE LIGHTFOOT AND MARTHA HARDY, APPELLANTS,

vs.

WILLIAM E. COLLIER, ASSIGNEE OF BENJAMIN B. BARNES, A BANKRUPT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

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1 UNITED STATES OF AMERICA, *Western Division, Southern District, of Georgia,* } ss:

At a stated term of the circuit court of the United States of America for the western division, southern district, of Georgia, holden at the United States court-rooms, in the city of Macon, in and for the said division and district, on Monday, the seventh day of May, in the year of our Lord one thousand eight hundred and eighty-three—present, the Honorable Henry K. McCay, judge for the northern district of Georgia, presiding—under assignment and appointment by the circuit judge of the fifth judicial circuit, in accordance with the statute in such case made and provided, it having been made to appear, in accordance with law, that the district judge for said southern district of Georgia was, through physical disability, prevented from holding said term, the following proceedings, among others, were had:

2 TRANSCRIPT OF RECORD.

Bill. Filed Dec. 16, 1879.

In the Fifth Circuit Court of the United States for the Southern District of Georgia. In Equity.

WM. E. COLLIER, Assignee of B. B. Barnes, B'k'pt, Compl't,

and

ELIZA A. ADAMS *et al.*, Def'ts.

Bill for cancellation. Filed in eastern division Dec. 16, 1879. Transferred to western division Oct. 5, 1880. Decree, Nov. 25, 1882. Petition for rehearing and final decree, May 15, 1883. Order for appeal June 12, 1883.

To the honorable the judges of the fifth circuit court of the United States for the southern district of Georgia:

William E. Collier, duly appointed assignee of Benjamin B. Barnes, a bankrupt, upon his own petition, said complainant and bankrupt both being citizens of Georgia and residents of the southern
3 district of Georgia, brings this his bill against Moses Barnes, John Barnes, Benjamin Barnes, Andrew J. Barnes, Patience Lightfoot, and Sarah Vinson, all of whom reside in the county of —, in the State of Texas, and who are represented by John D. Adams, of Macon county, in said southern district of Georgia, as their agent and attorney-in-fact; Martha Conart, now Martha Hardy, wife of William W. Hardy; Eliza A. Adams, wife of the said John D. Adams, and Remillison Adams, who reside in said southern district of Georgia.

And, therefore, your orator complain- and says:

1st. That on the 2nd day of April, 1874, the said Benjamin B. Barnes filed his petition in bankruptcy in the district court of the United States for the southern district of Georgia, and was then & there duly adjudged a bankrupt by said court.

2nd. That afterwards, to wit, on the first day of June, A. D. 1874, your orator was duly elected, in terms of the law, assignee of said bankrupt, and a deed of assignment of the bankrupt's estate
4 duly made to your orator, all of which will fully appear by reference to the records in said case of file in the district court, to which leave of reference is prayed.

3rd. That the said bankrupt when he filed his said petition in bankruptcy set forth therein as his property the following tracts of land, to wit: Lot of land number (197) one hundred and ninety-seven, (50) fifty acres from the northeast corner of lot of land (196) one hundred and ninety-six, Mossy creek being the line, (100) one hundred acres from the west half of lot (219) two hundred and nineteen; lot number (220) two hundred and twenty; the south half of lot number (221) two hundred and twenty-one, (50) fifty acres, more or less, from the northwest corner of lot number (231) two hundred and thirty-one, the branch being the southeast line; (5) five acres up and down the creek of lot (196) one hundred and ninety-six; also the water privileges on lot number (196) one hundred and ninety-six; containing in the aggregate (708½) seven hundred and
5 eight and one-half acres, more or less, and all lying & being in the six- (6) district of Houston county, with the exception of the (50) acres of the lot from number (196) one hundred and ninety-six and the northwest corner of lot number (197) one hundred and ninety-seven, which are in the six- district of Crawford county, and all lying in said southern district of Georgia.

Your orator further shows unto your honors that immediately after said deed of assignment was made to him in June, 1874, he took possession, as such assignee of said bankrupt, of the lands above mentioned, has ever since been in possession thereof, has received the rents, issues, and profits therefrom, paid the taxes thereon, and administered the same as a part of the assets of said bankrupt's estate.

Your orator further shows unto your honors that he never heard of any adverse claim set up by said defendants or any one else till about a year after he went into possession thereof as assignee,
6 when he was informed that said defendants claimed title to said premises under a deed alleged to be made by the said Benjamin B. Barnes to the defendants, bearing date on the (25) twenty-fifth day of September (1863) eighteen hundred and sixty-three, which deed was recorded in the county of Crawford on the (26) twenty-sixth day of March (1864) eighteen hundred and sixty-four, as your orator is informed and believes, by the said Benjamin B. Barnes, the bankrupt himself, but the same was never recorded in the county of Houston until the (30) thirtieth day of September, A. D. (1874) eighteeen hundred & seventy-four, some time after your orator had taken possession thereof as assignee.

Your orator further alleges and charges that said deed was never delivered by the said Benjamin B. Barnes, the bankrupt, to the said defendants or any of them, or to any duly appointed attorney or agent of theirs, in presence of the subscribing witnesses thereto, nor does your orator believe that it was ever delivered until the

7 said Benjamin B. Barnes, the bankrupt, became so greatly involved that he feared his creditors would reach the said land. Your orator shows that the said deed was wholly voluntary, being founded on no other consideration than blood, the grantees therein being the children of the said Benjamin B. Barnes. Your orator shows that the said Benjamin B. Barnes, after the date of said deed, remained continuously in the possession of the said premises as he had done before, exercising acts of ownership and control over the same until the same were turned over to orator as his assignee; that he received the rents, issues, and profits arising therefrom, paid taxes on the same as his own property, and obtained credit upon the faith of the same being his property, both before the late war, during the continuance thereof, and after the close thereof up to the filing of his petition in bankruptcy & the assignment to the assignee.

8 Your orator shows that no suit or action at law or in equity has been instituted against him by the said defendants, or any of them, for the recovery of said premises or any portion thereof, and that more than two years have elapsed since the accrual of their cause of action, if any they ever had, and also since the filing of the petition in bankruptcy of the said Barnes, and the adjudication thereof, or of your orator's appointment as his assignee, and he submits that under section (5057) five thousand and fifty-seven of the Revised Statutes of the United States *that* if the said defendants ever had any cause of action against him for the recovery of said premises the same is barred.

And your orator further shows unto your honors that while said voluntary deed, made as aforesaid, is, your orator believes, void, and while the defendants' said cause of action against your orator (if any they ever had) may be barred as stated, yet the said deed rests as a cloud upon your orator's title and greatly interferes with the

9 sale of said land, and if brought to sale without said cloud upon your orator's title being removed by this court the land would not bring an adequate price or anything like its real value.

Complainant hereby expressly waives discovery from said defendants or any of them. Your orator, being without any adequate, full, & complete remedy at law, therefore respectfully prays your honors for a decree of this honorable court compelling, ordering, and requiring the said defendants to deliver up the title deeds aforesaid, made to them by the bankrupt in 1863, to the clerk of this court, in order that the same may be cancelled, and that after said deeds are delivered up as prayed *that* they be cancelled and declared null & void & as conveying no title.

Your orator further prays that your honors will decree that the assignee, your orator, shall sell said tract of lands, and pay out the proceeds arising therefrom in the due administration of the bankrupt's estate, and that he may have such other and

10 further relief as to your honors shall seem meet and the facts of the case warrant.

And may it please your honors to grant unto your orator the writ of subpœna of the United States of America, directed to Moses

Barnes, Benjamin Barnes, Andrew Barnes, John Barnes, Patience Lightfoot, Sarah Vinson, and their said agents and attorney--in-fact, John D. Adams, Martha Cowart, Eliza A. Adams, wife of the said John D. Adams, and Remillison Adams, directing [and] requiring them, under a certain penalty therein mentioned, to be and appear at the said circuit court of the United States for the southern district of Georgia, then and there to stand to, abide by, & perform such order, direction, and decree as may be made in the premises.

SAMUEL HALL,
ANDREW SLOAN,
Compl't's Solicitors.

Acknowledgment of Service.

11 Acknowledge due & legal service for John D. and Eliza A. Adams, Remillison Adams; Moses, John, Andrew J. and Benjamin B. Barnes, Patience Lightfoot, and Martha Vinson.
10 Dec'r, 1879.

R. F. LYON,
Sol'r for said Def'ts.

Endorsements: In the United States circuit court southern district of Georgia. William E. Collier, assignee B. B Barnes, bankrupt, compl't, and Eliza A. Adams *et al.*, def'ts. Bill for cancillation of deed, &c. Filed Dec. 16, 1879. W. P. Ward, clerk. Samuel Hall & Andrew Sloan, compl't's sol's.

Equity Subpœna. Filed Dec. 19, 1879.

UNITED STATES OF AMERICA, *Southern District of Georgia,* } *ss:*

WILLIAM E. COLLIER, Assignee of Benj. B. Barnes, Bankrupt, Compl't, and ELIZA A. ADAMS *et al.*, Def'ts. } In Equity.

12 The President of the United States of America; to Moses Barnes, John Barnes, Benjamin Barnes, Andrew J. Barnes, Patience Lightfoot & Sarah Vinson, who reside in Texas — and represented by John D. Adams, of Macon county, in Ga., their agent and attorney-in-fact; Martha Cowart (new Martha Hardy, wife of Wm. Hardy), Eliza A. Adams, wife of John D. Adams, & Remillison Adams, who reside in the southern dist. of Georgia, Greeting:

For certain causes offered before the judges of the circuit court of the United States for the southern district of Georgia, in equity, you & each of you are hereby commanded and strictly enjoined that, laying all other matters aside, and notwithstanding any other excuse, you personally be and appear at the clerk's office of the said court, wheresoever the same shall then be, at rules to be had on the first Monday in January next, to answer to those things which shall

then and there be objected to you in a bill of complaint, Wm. E. Collier, assignee, filed by the said complainant, and to do further and receive what the said court shall have considered in that
13 behalf, and this you may in nowise omit under a penalty of five hundred dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Savannah, in said district, this the 16th day of December, in the year of our Lord one thousand eight hundred and seventy-nine, and of American Independence the one hundred*th* and fourth.

[Seal of the U. S. Circuit Court, Georgia.]

W. M. HEYWARD,
Dep't. Clerk.

SAMUEL HALL &
ANDREW SLOAN,
Compl't's Sol's.

MEMORANDUM.—The defendants are required to enter appearance in the above cause in the clerk's office on or before the day to which this writ of subpœna is returnable; otherwise the bill may be taken *pro confesso* against them.

W. M. HEYWARD,
Dep't. Clerk.

SAMUEL HALL &
ANDREW SLOAN,
Compl't's Sol's.

Acknowledgment of Service.

Service acknowledged 18 Dec'r, 1879.

R. F. LYON, *Def'ts' Atto.*

14 Endorsements: In the circuit court of the United States for the southern district of Georgia. January rules, 1880. William E. Collier, assignee of Benj. B. Barnes, bankrupt, complainant, and Eliza A. Adams *et al.*, defendants. Original subpœna in equity, issued 16th day of December, 1880. Filed 19th Dec'r, A. D. 1879. W. M. Heyward, dep't. clerk. Samuel Hall & Andrew Sloan, compl't'-sol's.

Answer of Defendants. Filed Jan. 3, 1880.

In the 5th Circuit Court of the United States for the Southern District of Georgia. In Equity.

WILLIAM E. COLLIER, Assignee [of] Benjamin B. Barnes, Bankrupt,

vs.

MOSES BARNES & Others.

For relief, &c.

The joint answer of Moses Barnes, John Barnes, Benjamin Barnes, Sarah Vinson, Patience Lightfoot, Andrew J. Barnes, Eliza I. Adams and her husband, John D. Adams, who is also the
15 agent for all the defendants, Remillison Adams, and Martha Cowart, now Martha Hardy.

These defendants, for answer to complainant's said bill, without waiving the right to demur to the same, answering, say:

1st. That they admit the adjudication of Benjamin B. Barnes as a bankrupt at the time stated in the bill—2d day of April, 1874—but they deny that there was at the time any necessity for such application or adjudication, but, on the contrary, they say that at the time the said Benjamin B. Barnes was possessed in his own right of property (other than the subject-matter of complainant's bill) more than sufficient for the payment of all his debts, but being at the time so weak in mind from the use of intoxicating liquor as to be almost an imbecile, & he was in this weak condition induced to this course by the artful practices of one Joel R. Griffin, a practicing attorney of the county of Houston, to serve some sinister purposes of his wife, most especially to defeat the title of defendants to the property named in complainant's bill.

2d. Defendants also admit the lawful appointment of com-
16 plainant as assignee of bankrupt & the assignment of all the bankrupt's estate to said assignee.

3d. Defendants admit that the lands mentioned in complainant's bill were in the schedule attached to said Barnes' petition for bankruptcy, at least so they have been informed, & have no reason to deny the fact, but they do deny that it was the voluntary act of said Barnes, bankrupt, but that of the said Griffin, instigated thereto by the said wife of the said Barnes to serve her purposes, antagonistic to the right of defendants; and they also, answering, say that it was not the property of the said Benjamin B. Barnes or any part thereof, nor had he any interest in it, except as a tenant holding the same for these defendants, as he had been from the last of 1867 or 1st of 1868 down to that time, nor was it in anywise or for any causes subject to be administered by the bankrupt court for the benefit of the said bankrupt, his family or his creditors, nor did any title or interest in the same pass to the said complainant by reason of such wrongful and improper return of the said deed of assignment to him, as set out in the said bill.

4th. Defendants do not know when said complainant took
17 possession of said premises, but admit that he did so and at no great while after the date of his said deed of assignment, and that he has been in the possession of said lands & buildings thereon, receiving the rents from the time he took possession thereof to the present, and he may have paid the taxes on it during that time, as it was his duty to do so, he having the rents thereof in his hands for that purpose.

5th. Defendants deny, and so answer, that complainant has administered said land as a part of the assets of the said bankrupt's estate or any part of the same, but in his attempt to do so he has been constantly met, opposed, and defeated by these defendants under their title to said property, as will be more fully hereafter stated.

6th. Defendants admit, and so answer, that they claim title to said property, and that it is their property absolutely in fee-simple, not only as against the said Benjamin B. Barnes and the said complainant, but the whole world beside, under a deed made and delivered in the presence of the witnesses thereto signed by said Benjamin B. Barnes to these defendants on the 25 day of September, eighteen hundred and sixty-three (1863), the delivery being actually
18 made at the time to Andrew J. Barnes for himself & as the agent for the others.

7th. They deny that said deed was recorded in the county of Crawford on the (26) twenty-sixth day of March (1863), eighteen hundred and sixty-three, by the said Benjamin B. Barnes; on the contrary, they say, and so answer, that it was recorded in that county at that time by Andrew J. Barnes, one of these defendants, to whom it had been delivered, as aforesaid.

8th. They admit that said deed, a copy of which is hereto attached, marked Exhibit A, as a part of this answer, to which defendants pray all necessary & usual leave of reference, was not recorded in the county of Houston until the (30) thirtieth day of September, eighteen hundred and seventy-four (1874), but the said lands formed one solid body or tract of land known as the Barnes mill tract, on which, at the time of the conveyance, was a wool-carding mill, but which is not there now; also a valuable grist-mill, and which is still there, forming a part of its improvement. This land, forming but one tract containing about
19 (708) seven hundred and eight acres, lies immediately on the line of Houston & Crawford counties, with a part of the same in the county of Houston & the other in the county of Crawford, to which latter county the said Benjamin B. Barnes resided at the time of said deed & continuously from thence hitherto, but on a different tract or body of land not connected, and the county of Crawford was, therefore, the proper place under the law for the registry of this deed, as it was here persons, in dealing with or crediting said Barnes, now bankrupt, on the faith of property in his possession, would naturally & properly go to search for incumbrances and conveyances against him or his property, & being so

marked was notice to all the world of these defendants' title to said premises from the date of said deed down to this time. See § B, 11.

9th. As before answered, defendants here repeat that the said deed was delivered at the time of its execution & in the presence of the subscribing witnesses to Andrew J. Barnes, one of the defendants, for himself & the other defendants, and he at once went into possession of said lands under said deed, and, being so in possession of said lands, held, used, occupied, and treated them
20 as the property of himself and the other defendants from that time to the last of the year (1866) eighteen hundred and sixty-six, during which time he had the said deed recorded, as already stated; he gave in and paid taxes on the said lands for 1864 & 1866 as his property & that of the balance of defendants; he cultivated the lands, run the mills, accounted to the other defendants for rent on the same a part, at least, of the time, for—that is, he paid some rent to John D. Adams, who verifies this answer, for his wife—how much he does not now recollect—and a part to Remillison, to wit, the sum of two hundred dollars, as the said John D. now recollects. At the end of this year, or about that time, the said Andrew J. Barnes made up his mind to quit Georgia & remove to the State of Texas, where his three brothers & two sisters then resided; but before doing so he rented the premises to one Josiah Wright, as the tenant of him, the said Andrew J., & the balance of the defendants, for the year 1867, and gave the *the* original deed from said Benjamin B. Barnes to these defendants for said premises so
21 delivered to & held by him as aforesaid from its execution to that time over to the said John D. Adams to hold for his wife & the other defendants as their monument of title for said property, and the said John D. Adams has held said deed in his actual possession for such purposes & parties from that time to the time he turned it over to his counsel to resist the application of complainant to sell said lands hereinafter referred to and pleaded, where it has remained to this time, claiming the title to said lands all the time for his wife & the balance of the defendants, & never abandoning for an instant such claim. This said tenant, Wright, held said premises on rent as aforesaid for the said year 1867, and at the end thereof turned it over to the said Benjamin B. Barnes, who was the father of defendants, to hold for them, which he did from that time until complainant took the possession of the same. He gave in and paid taxes on said lands for the year 1868 as the agent of defendants in the county of Crawford, and had to it appended
22 exhibits showing the giving in and paying taxes in Houston & Crawford — by Andrew J. & said Benjamin B., as stated, marked Exhibit B, to which they pray the usual & all necessary leave of reference. Defendants have not been able as yet to ascertain how the taxes were given in & paid on said lands for the years 1867, 1869, 1870, 1871, but they have reason to believe that they were given in for the years 1867, 1869, & 1870, if not for 1871, in Crawford or Houston counties by the said Benjamin B. Barnes as the agent of these defendants, and if they are able to obtain the

proper proofs then they will submit the same to your honors before the hearing.

10. Some time after the year 1868—defendants cannot now state the exact time, because of the difficulty of access & the absence of tax digests in the various offices where they are required to be kept by law—the said Benjamin B. Barnes, in the county of Houston, either by himself or others, gave in said lands & paid the taxes on the same & not as the agent of defendants, & without designating the right — title in whom said property vested except himself; these defendants attribute these returns &
23 this action, if done by the said Benjamin B. Barnes, to the influence & management of the wife of the said Benjamin B., who was always greatly dissatisfied with the conveyance of the said lands to these defendants, & not to any counter-claim of the said Benjamin B. Barnes to that of defendants, for he uniformly from the date of his said deed to defendants down to his bankruptcy treated and recognized said premises as that of defendants, & never pretended to hold them in any other right. Defendants had no knowledge or information that the lands were so given in for taxes; they supposed that said Barnes was still giving in and paying taxes on the lands as defendants' property, and never knew or heard to the contrary until after his bankruptcy & the claim of the assignee; but, as has already — intimated, at the time of his & his estate being put into bankruptcy, he had fallen into bad habits, his mind greatly weakened in consequence, his business neglected, and it and himself — managed by others wholly hostile to the interest of
24 defendants, but they never dreamed up to the bankruptcy that there was any hostile claim to their title or interest until the claim of the assignee as aforesaid came to their knowledge. The said Benjamine B. Barnes accounted to some of the defendants, if not all of, for a part of the rents of said premises for the first year or two of his tenantcy, but that he ceased to do so excited no suspicion on defendants' part that there was anything wrong. They knew that their father was old and feeble as aforesaid; that collection or realization of rents from tenants on any sort of property in the county was, even when looked after closely, most uncertain. These defendants were scattered widely apart from each other; they did not need the rents, if any were realized; they did not desire to sell, & it was in their father's hands, so they just let it remain in that condition knowing they could get it when any of them wanted it.

11th. Defendants, further answering, say that at the time said deed was made, to wit, in 1863, as above stated, the said Benjamin B.
Barnes was in good condition financially, in fine circum-
25 stances, owned & lived on a large & valuable tract of land of some 1,200 acres, a number of negro slaves of considerable value, & a well-stocked farm, with all the furnature, materials, provisions, & machinery necessary to running and keeping up the same, and other lands, all of great value in good money—say, of from 15 to 20,000, fifteen to twenty thousand dollars, but at the values of that

day & the currency then in circulation a much larger amount. He also owned these lands & the improvements consisting, among other things, of a valuable water-mill and wool-carding machine, the whole of the value of from six to seven thousand dollars. The said Benjamin B. was in all respects at that time a prosperous man. He owed but one debt of any importance; that was a debt controiled by James. M. Jones, then & now of the county of Bibb, for some four thousand dollars, or thereabout, but as the complainant controls or has that debt drawn against his estate its amount can easily be made known to your honors, — given by said Barnes some
26 time before that for the purchase of negro slaves, but which debt was then past due & would have been paid before that time but that there was no such currency in circulation as said Jones was willing to take in payment of said debt. The other debts of the said Barnes at that time were quite small and would not have exceeded the sum of three hundred dollars. All other debts of said Barnes then in existence have long since been paid, but the said Jones' remained unpaid, for the reason already stated, until the war was over.

The said Benjamin B. Barnes was at that time—when this deed was made—living with a second wife, by whom he had a family of children—defendants being the children of his first and deceased wife—and as he had acquired some negro slaves by his last wife that were secured to her separate use, of which her children would get the benefit, and as this property contained in this deed would only be a suitable provision for defendants as a part of his children—having reference to his wife and younger children,
27 himself, & all his creditors and the balance of his estate he made this deed to defendants as a provision for them out of his estate and to equalize them with what his wife, children, and himself would have of the balance of his estate, including his wife's separate estate—after the payment of all his debts—with no intent to commit any fraud on any one, nor to hinder, delay, or defeat any creditor. Such a supposition could not be entertained for an instant, considering his condition as aforesaid and his perfect ability to pay every dollar that he owed at the time, with a large balance of property for the balance of his family.

12th. Defendants deny that said Benjamin remained in possession as the owner of said property, except as already answered; they deny that he obtained credit on the faith of the said property; they deny that any one credited said Barnes on the faith of his being the owner of the mill property—who did not know of the existence of said deed. They deny and so answer that when he, the said Barnes, was carried into bankruptcy he owed a single debt that was created or contracted on the faith of this property. They
28 deny and so answer that the said complainant is seeking to condemn or administer this property for the satisfaction of a single debt that was contracted on the faith of this property after this deed was made to them. On the contrary, the debts due and unpaid by the said Barnes at the time of his adjudication in bankruptcy were few and small, and were created on the faith of the

property where he lived and [his] widely and well known condition as a solvent man.

13th. When the said Benjamin B. Barnes was carried into bankruptcy, as aforesaid, the property that actually belonged to him—not including the lands in this controversy, for they did not belong to him—was then in excess of what he owed to everybody, and even at the low prices the said property sold under a forced sale, at most unfavorable time, with the liberal homestead exemption, far in excess of his debts, and that they did not pay his debts is to be attributed to the extraordinary expenses and charges made on said estate in the course of its administration—to which defend-
29 ants respectfully invite your honors' attention, as the complainant has referred to and made the same a part of his complaint.

14th. Defendants further show that the said Andrew J. Barnes, while himself in the possession of said property as aforesaid, as an act of ownership, which was not stated at the place in the foregoing answer, on 16 January, 1866, insured the mill building on said property for $3,500 for one year from that date, paying as premium for such insurance one hundred and twenty-two dollars & fifty cents; the original policy of such insurance being hereto attached as Exhibit C, to which they ask the usual and all necessary leave of reference.

14th. Defendants admit that they have instituted no action at law or in equity for the recovery of said property against the complainant; they also admit that more than two years have elapsed since the said complainant had the possession of the said lands, but defendants deny that under section 5057 of the Revised Statutes of the United States defendants' right to recover said premises is barred.

30 15th. It might be true that defendants, under other circumstances under that statute, would be cut off from bringing any suit for the money the complainant has received from the rents for a period of two years beyond the bringing of the suit for the same, but [it] cannot be true in this case—that statute is not applicable to cases like this.

a. When complainant got the possession of these lands, & while he so held, his possession was not such a conversion under that section as required suits to be brought against the assignee therefor within two years thereafter. Such possession was not tortious or adverse, but inasmuch as, although the assignee had the possession of the property, the title which he claimed thereto was disputed by these defendants his holding was in trust for the benefit of all parties interested, & he could not administer it as the assets of the bankrupt, nor sell it as such assignee, except upon petition to the district court of the United States for that purpose, which said petition said court could only grant on reasonable notice, &
31 when, if such order was, granted, and the land sold under such order, [it] should be held by such assignee subject to any suit or controversy for the same.

b. If such a thing as this had happened & defendants had not brought suit within two years from the date of that sale, asserting their right & title to that money, that section 5057 would have cut off or barred that right.

c. This statute was not intended by operation of law to vest a title to property in an assignee that he did not otherwise have, nor is the title to this property vested in this assignee by reason of defendants' failure to bring suit against him for it.

d. The title to this property is the defendant's, & can be not defeated except by their own conveyance or by a prescription title created under the statute of the State of Georgia by an adverse holding under color of title & claim of right for seven years, and then act of Congress was not intended nor does it so act as to change their rules of property and rights of parties to their property.

32 *e.* It was intended simply as a personal protection to the officer, under that law, for his official acts.

This claim of said complainant, to say nothing of its remarkable character, is without foundation.

15. These defendants, further answering, say, and so plead, that they are now here in court on the demand & at the suit of the complainant to try conclusions as to the title of said property, & if it be true that any course of action of theirs against him was barred by section 5057, still, as they are now here in court, there is nothing in that section that prevents them from making good their title to said property. It in nowise affects their title; it only goes to the cause of action which has not yet accrued.

16. These defendants, further answering, say, and so plead, that as soon as their agent ascertained that the complainant was claiming said lands they gave notice of their claim and employed counsel to represent their interest & bring such suit as would

33 protect their interest, but before that suit could be brought, to wit, on the 14 January, 1876, the said William E. Collier, as the assignee of said Benjamin B. Barnes, filed his petition, under section 5063 of Revised Statutes, in the district court of the United States for the State of Georgia, stating his possession of said lands, the claim of defendants thereto, & asking an order for its sale after reasonable notice to defendants.

On the hearing of which petition that court granted an order, of which the following is a copy:

"Let notice be given in writing to each of the said claimants or their attorneys to appear before this court on the first of the February session, to wit, the 10th April, 1876, at 10 o'clock a. m., and show cause, if any they have, why the prayer for sale of said property should not be granted; notice to be served 20 days prior to said 10th day of April, 1876.

(Signed) JOHN EISKIN,
U. S. Judge.

This petition and order was served on your petitioners, and they thereupon in due time appeared in said court & filed in said
34 court on the 12th May, 1876, their answer to the same, showing for cause why said prayer should not be granted, setting forth substantially that the land was theirs and not of the bankrupt's; that he had no interest in it; was only there as their tenants, & it — not *the* subject, in no event & in no consideration, to be administered as the assetts of the bankrupt. Copies of which said petition & order of court is hereunto attached as Exhibit D, to which *he* asks the usual leave of reference as often as may be necessary. A copy of defendants' answer with copy — deed attached is also hereto attached, marked Exhibit F, and as a part of this their answer, to which they ask all necessary and usual leave of reference.

This answer or reply of defendants was considered, taken, & held by complainant & his counsel as a full & sufficient reply, if true, to *the* his prayer for sale as a reason why the same should not be granted, and these parties being thus at issue in this suit or proceeding between them touching this property and their
35 adverse interest in the same, on which that court having jurisdiction thereof for that purpose was called on to try & settle by its judgement; they proceeded by the permission & under the authority of that court to take testimony on both sides to enable that court to try and settle the right when the proof was so conclusively against the said complainant as to right to the order prayed for in that proceeding. When the said cause — on for trial in said court, before the judge thereof, on the — day of ——, in the year 1879, the term whereof is not yet expired, defendants, being ready for trial & settlement of the issues made in said controversy as aforesaid, having prepared their said answer at great labor and expense when the said complainant represented to said court that said proceedings were insufficient to settle all the questions & issues made & involved in said proceeding, & the title to said property, and by the permission of the said court the said complainant then & there withdrew and discontinued his said proceeding, the said court allowing the said complainant to do so on the express conditions
36 that said discontinuance of said proceeding should not prejudice the right or claim of either the said complainant or these defendants, & on the further condition that said complainant should, without any delay, file a bill in equity in this court that would bring up & have settled all the questions made in said proceeding, & all the rights, equities, & titles of all the parties to said proceeding, & which will more fully appear by reference to said order and judgement now remaining in said court of full force & binding on said parties.

17th. Defendants claim & respectfully insist that inasmuch as they in good faith went into said court on the notice of said complainant & the requirement of that honorable court & then promptly and in good faith set up and maintained their title to said property without bringing another suit, & thus exposing themselves & said complainant to further cost, expenses, & litigation, *that* they did all the law required of them.

a. That the said proceeding & and their said answer submitting the issues and rights ascertained therein was equivalent in all respects & stood instead of another & different suit brought
37 or to be brought by them for the recovery of said property.

b. And to permit the said complainant after all that, & after the limitations & restrictions imposed on him by said order & judgement in allowing said discontinuance, & requiring him to file his bill in equity in this court to settle the rights of both parties, to turn around now & say & so plead that defendants had not brought such suit at law or in equity as was contemplated by section 5057 of Revised Statutes, & that therefore they, these defendants, were barred, their title cut off & all remedy gone would, under the circumstances, be to allow & justify complainants in the practice of the grossest & most inexcusable of frauds, which defendants feel assured that this court will not allow.

18. These defendants, on the petition of said complainant, as already shown, had come into the honorable district court of the United States, presided over & held by one of the judges of this court, & to prevent the granting of that petition had shown for cause, as stated, that the property was theirs, & under no circumstances the subject of administration as assets in his hands of the bankrupt's
38 estate. This issue was accepted, & both parties prepared to meet & try that issue on its merits. The defendants were detained in that court, awaiting a trial on the merits with the most perfect confidence & trust in the power, wisdom, & justice of that court to protect said property & the title thereof to defendants in all its integrity from May, 1876, to Dec'r, 1879; and now, if the complainant could by withdrawing his petition cut off the right in this way of defendants, it would be using the law, the process of the court, and the court itself, to practice a flagrant fraud on defendants, but this is exactly what the complainant has done, now claims, & asks this court to so adjudge. Defendant- insists that no such unjust and inequitable plea or demand will be allowed by this honorable court.

19th. Defendants plead said order and said proceeding in bar of such claim, & insist that it is not within either the letter or spirit of said section.

20th. Defendants, further answering, say that if said section 5057 was intended to or has the effect to bar these defendants from maintaining any suit at law or in equity in any court against the
39 complainant touching said property, under the circumstances it equally bars the said complainant from bringing or maintaining this suit, for it applies not to the party particularly but to the suit, and if said complainant is right in his said position & construction of the law when he dismissed his petition he lost the right to ask the sale of this property, and abandoned all claim to it as assets of bankrupt & his right to administer it as such.

21. But these defendants say, and so plead and answer, that neither the one position -or the other is true in theory or right of this case; on the contrary, when the complainant withdrew his said application, connected and joined together as it was with the defence made

by defendants thereto as aforesaid by the permission & on the terms & conditions of the said court, as already stated, he was allowed to do so by said court, not as matter of right, but because the said court in which this proceeding was being had, although an adjunct to & with somewhat like powers of this court in causes of this character, and the proceeding itself as instituted by complainant
40 under the statute altogether, did not furnish such ample and complete remedy, having reference to the facts & law of this case as in the opinion of said court was sufficient to ascertain, secure, and protect the rights of both parties to this property; in other words, that in a court of equity both of the parties to said proceedings would have a better opportunity to have their rights & interests in said property ascertained & settled than in the district court & under the said proceeding and issue so made as aforesaid therein.

22. It was in this sense & this only that complainant was permitted to withdraw or discontinue said proceeding upon the express understanding & order of said court & his agreement, on the faith of which the same was allowed, that he would file this bill in equity in this court, not to bar or estop defendants by any technical pleas in bar, but that the question of right & title as to this property, whether in complainant or defendant-, should be tried & adjudicated in this court, whose powers were broader, deeper, and perfectly adequate & complete for that purpose than the said court & proceeding therein as aforesaid, and that the one proceeding might
41 be dropped so as to take the other with perfect safety & without prejudice to the rights of either complainant or defendant- in so doing. It was in this sense & this only that the said complainant was allowed to withdraw said proceeding & institute this, & that the whole effect of it & whole purpose it is to accomplish.

And so this said bill in equity was filed in this court against these defendants, bringing them with their cause to be heard, tried, & adjudged in this form on its merits, and so defendants accept & come here with their answer in reply to the same and ask this honorable court to weigh & decide the same according to the right, justice, & equity of the same. They say that this proceeding in this court, where the complainant came with his said cause only on the permission of the court under the peculiar and equitable circumstances presented, is but a continuation of the proceeding in said court, &, in aid of that, for the benefit of all parties, without injury to either, the two courts, this & that, in respect to this matter, acting in accord & perfect harmony with each other to advance the
42 ends of justice & right without prejudice to either party, & so defendants have accepted the same & come here in obedience to the order of said court to have whatever rights they may have in the premises ascertained, adjudged, & decreed to them.

23. These defendants, further answering, say that during all the time said complainant has had the possession of said premises, of the value of six thousand dollars, he has received the annual rents of the same, of the value of six hundred dollars a year, & he prays your honor, on account taken, to render the same to these defend-

ants, less the expenses he has actually paid out for the necessary repairs & taxes paid on the same.

24. Defendants, further answering, say that it is true that their said deed was not recorded in the county of Houston until the time stated in complainant's bill, when it was done by John D. Adams, the agent of defendants, who has had said deed in his safe-keeping and personal custody since it was delivered to him by Andrew J. Barnes in 1866, as already stated, and he only had it recorded
43 then on account of hearing that the said complainant was endeavoring to administer it as assets of Benjamin B. Barnes. It has not been recorded there earlier for the reasons already stated & for no others.

It being considered that a record of it, a sort of voluntary deed, in the county of the residence of the maker & wherein a part of the lands conveyed in the deed were situate.

25. And, having fully answered, defendants ask your honor to direct the possession of the lands be decreed into the possession of defendants as their own property, & that complainant account to them for the rents & use & occupation of said premises, all of which defendants ask by way of cross-bill against said complainant, & they will ever pray.

R. F. LYON.

GEORGIA, *Bibb County:*

You, John D. Adams, do swear that you are the agent [or] attorney-in-fact of Moses Barnes, John Barnes, Sarah Vinson, Patience Lightfoot, Benjamin Barnes, and the agent of Remillison Adams and of Martha Hardy and the husband of Eliza J. Adams, the per-
44 sons in the deed referred to in this answer; and *he* further deposes that the facts set forth in the foregoing answer are true in substance and in fact.

JOHN D. ADAMS.

Sworn to & subscribed before me on this 24th day of December, 1879.

J. J. SIMMONS,
Judge S. C. M. C.

Tax Digest Houston County, Georgia, 1864.

No. 52. 8th Dist., Georgia Militia (9th or Fort Valley).

Extract.

Barnes, A. J., ag't for his brothers & sisters.

Total No. acres land—750.
Dist.—9.
Aggregate value of land—$15,000.
Aggregate value of whole property—$15,000.
Value after deducting $200—$14,800.

Tax Digest Houston County, Georgia, 1866.

No. 52. 8th Dist., Georgia Militia (9th or Fort Valley).

Barnes, A. J., ag't for his brothers & sisters.

Total No. acres land—750.
Dist.—9.
Aggregate value of land—$3,750.
Aggregate value of whole property—$3,750.
Value after deducting $200—$3,550.

GEORGIA, *Houston County:*

45 I, A. S. Giles, ordinary of said county, do hereby certify that the foregoing exemplification- in writing *is* true extracts from the tax digests of said county for the years 1864 & 1866, showing in full the tax returns of taxable property of A. J. Barnes, as agent for his brothers & sisters for said years, as appears on said digests, and I further certify that said digests are on file in my office, and that there is no tax digest for the year 1865 on file in my office.

In testimony whereof I have hereunto set my official signature and seal this 5th day of December, 1879.

[Seal Ordinary's Office, Houston County, Georgia.]

A. S. GILES,
Ordinary Houston County, Ga.

Copy of Insurance Policy.

No. 31. $3,500.00

Chartered 1859. Capital, $350,000.

By this policy of insurance The Georgia Home Insurance Company of Columbus, Georgia, in consideration of one hundred and twenty-two $\frac{50}{100}$ dollars, the company paid by the insured hereinafter named, the receipt whereof is hereby acknowledged, doth insure A. J. Barnes, of Houston county, Ga.,
46 against loss or damages by fire to the amount of three thousand and five hundred dollars on his mill property, viz., on his grits-mill, fifteen hundred dollars; on his carding machine, fifteen hundred dollars, and on his rice-mill five hundred dollars; all situated in Houston county, three and a half miles from Fort Valley, all known as Barnes' mill. The above-assured property is all connected and not exposed by any other buildings—

[U. S. conveyance stamp, 50 cts.]

For *three* months, viz., from January 16th, 1866, to January 16th, 1867.

And the said company doth hereby promise and agree to make good unto the said assured, their executors, administrators, and assigns, all such immediate loss or damage not exceeding in amount

the sum insured, as shall happen by fire to the property as above specified, from 12 o'clock at noon to 12 o'clock at noon, during the time above named, the said loss or damage to be estimated according to the actual cash value of the property at the time the
47 same shall happen; and to be paid in U. S. Treasury or national bank notes within sixty days after notice and proof of loss made by the assured, in conformity to the conditions annexed to this policy: Provided always, and it is hereby declared, That this company shall not be liable to make good any loss or damage by fire which may happen or take place by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power.

And provided further, That in case the assured shall have already any other insurance against loss by fire on the property hereby insured, and not notified to this company, and mentioned in or endorsed upon this policy, then this insurance shall be void and of no effect; and if the said assured or their assigns shall hereafter make any other insurance on the same property, and shall not with all reasonable diligence give notice thereof to this company and have the same endorsed on this instrument, or otherwise acknowledged by them in writing, this policy shall cease and be of no further effect; and if any subsequent insurance shall be made upon the property hereby insured, which, with the sum or
48 sums already insured, shall, in the opinion of said insurance company, amount to an over insurance, said company reserve to themselves the right of canceling this policy by paying to the insured the unexpired premium *pro rata;* and in case of any other insurance upon this property hereby insured, whether prior or subsequent to the date of this policy, the assured shall not, in case of loss or damage, be entitled to recover or demand of this company any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on the said property.

And it is agreed and declared to be the true intent and meaning of the parties hereto that in case the above-mentioned premises shall, at any time during the period herein specified, be appropriated, applied, or used to or for the purpose of carrying on or exercising therein any trade, business, vocation, or for the purpose of storing therein any articles, goods, or merchandise which would in any way increase the risk, unless herein otherwise specially provided for or hereafter agreed upon by this company in writing, and
49 added to or endorsed upon this policy, then and from thenceforth, so long as the same shall be appropriated, applied, or used, these present shall cease and be of no force or effect.

And it is moreover declared that this insurance is not intended to apply to or cover any books of account, written securities, deeds, or other evidence of title to lands, nor to bonds, bills, notes, or other evidence of debt, nor to money or bullion; and that this policy is made and accepted in reference to the conditions hereto annexed, which are to be used in order to explain the rights and obligations of the parties hereto in all cases not herein specially provided for.

In witness whereof the Georgia Home Insurance Company hath caused these presents to be signed by the president and secretary thereof, in the city of Columbus, Georgia, but the same shall not be valid until countersigned by the agent of the company at Ft. Valley, Geo.

JAS. F. BOYEMAN, *President.*
D. F. WILLCOX, *Secretary.*

Countersigned — Fort Valley this sixteenth day of January, 1866.
WM. J. ANDERSON, *Agent.*

50 Endorsement on insurance.

No. 31. Expires January 16th, 1867. The Georgia Home Insurance Co. of Columbus, Georgia. Amount insured, $3,500.00.

Premium	$122 50
Policy	1 00
Stamp	50
	$124 00

Certified Copy of Petition of Assignee for Order of Sale.

UNITED STATES OF AMERICA, *Southern District of Georgia,* } ss:

District Court of Georgia.

I, James McPherson, clerk of the district court of the United States of America for the southern district of Georgia, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office, being a petition for sale of land and order of the court for a notice to show cause, &c.

In testimony whereof I have caused the seal of said court to be hereunto affixed, at the city of Savannah, in the southern
51 district of Georgia, this 19th day of January, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundredth.

(Signed) JAS. McPHERSON, *Clerk.*

Copy.

In the District Court of the United States for the Southern District of Georgia. In Bankruptcy.

In the Matter of BENJAMIN B. BARNES, Bankrupt.

To the Honorable John Erskine, judge of the district court of the United States for the southern district of Georgia:

The petition of William E. Collier, assignee of Benjamin B. Barnes, bankrupt, respectfully showeth that said Benjamin B. Barnes, bankrupt, returned in Schedule B 1, to his petition attached,

the following-described lands, to wit: Lot number one hundred and ninety-seven (197), fifty acres of lot number one hundred and ninety-six (196), from the northeast corner thereof, Mossy creek being the line; one hundred acres from the west half of lot number two hundred and nineteen (219), lot number two hundred and twenty (220), the south half of lot number two hundred and twenty-one (221), fifty acres, more or less, from the northwest corner
52 of lot number two hundred and thirty-one (231), the branch being the southeast line; five acres up and down the creek of lot number one hundred and ninety-six (196); also the water privileges on lot of land number one hundred and ninety-six (196), containing in the aggregate seven hundred and eight and one-half acres, more or less, and all lying in the sixth district of Houston county, with the exception of the fifty acres from lot number one hundred and ninety-six and the northwest corner of number one hundred and ninety-seven, which are in the sixth district of Crawford county, all of which was conveyed to your petitioner by the deed made to him as assignee, as aforesaid, which went into his possession, and is still in his possession, under said deed of assignment.

Your petitioner further shows the title to the said described lands is in dispute between him, as such assignee as aforesaid, and Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, Andrew J. Barnes, and Sarah Vinson, of the State of Texas; Martha Cowart, whose residence is unknown, but who resides in the State of
53 Georgia; Eliza A. Adams, wife of John D. Adams, who resides in Macon county, State of Georgia, and Remillison Barnes, whose residence to your petitioner is unknown.

Your petitioner also shows to your honor that the said Benjamin B. Barnes, bankrupt, returned, in his Schedule B 1 to his said petition attached, *returned* lot of land numbered two hundred and thirty-five (235), in the eleventh district (11th) of Terrell county, which was likewise conveyed to your petitioner as such assignee, and which is claimed by him, but the title to which is in dispute between him and Lucinda Smith (formerly Barnes), wife of Daniel W. Smith, of the county of Dooly, State of Georgia.

Your petitioner shows that the said Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, and Remillison Barnes claim title to the said first-mentioned lands under a voluntary deed from the said Benjamin B. Barnes to them, dated the twenty-fifth day of December, *September*, A. D. 1863, and that they are represented in their said claim by Richard F. Lynn, Esquire, of the city of Macon, an attorney of this court; he further shows that the said
54 Lucinda Smith claims under a like voluntary deed made to her by the said Benjamin B. Barnes on the eighteenth day of May, A. D. 1871.

Your petitioner further shows that Benjamin B. Barnes had the continuous and uninterrupted possession of all said lands from the respective dates of said deeds until he was adjudged a bankrupt, using and controlling the same as his own, and enjoying the rents,

issues, and profits thereof, and that the above-named people in both of said deeds are the children of said Benjamin B. Barnes.

Your petitioner prays your honor to grant him an order for the sale of all the said lands, after advertising the same such a length of time, and such terms as to credit as may be prescribed in said order as to holding the proceeds of such sale, to answer any suit that may be instituted therefor by any of said claimants, and that your honor would be pleased to prescribe such notice to the said claimants, their agents or attorneys, as may be deemed reasonable, and as — in accordance with the provisions of section 5063 of the Revised Statutes of the United States. Your petitioner will ever pray, &c.

(Signed) WILLIAM E. COLLIER,
Assignee of B. B. Barnes.

55 SAMUEL HALL &
WILLIAM A. LOFTON,
Of Macon, Ga., Petitioner's Att'ys.

Copy.

UNITED STATES OF AMERICA, *Southern District of Georgia,* } *ss:*

At Fort Valley, Georgia, in said district, on this, the thirteenth day of January, A. D. 1876, in person, came William E. Collier, and being sworn, maketh oath that the foregoing petition is true to the best of his knowledge, information, and belief.

(Signed) WILLIAM E. COLLIER.

[L. S.] JOEL R. GRIFFIN,
U. S. Commissioner.

Copy.

Order of the Court.

Let notice be given in writing to each of the said claimants, or their attorneys, to appear before this court on the first day of the February session, to wit, 10th April, 1876, at 10 o'clock a. m., and show cause, if any they have, why the prayer of petitioner for sale of said property ought not to be granted, &c. Notice to be served 20 days prior to said 10th of April, 1876.

(Signed) JOHN ERSKINE,
U. S. Judge.

January 17th, 1876.—Filed in clerk's office this Jan'y 19th, 1876.
(Signed) JAS. McPHERSON, *Clerk.*

56 Copy.

Memorandum by the Clerk.

There is attached to the original petition on file the following, to wit:

1. Copy of schedule B 1.
2. Copy of schedule B 5.
3. Copy of the deed of assignment of bankrupt's estate.
4. Certificate of the clerk that no certificate of exempted property is on file in his office.

Endorsement: No. 1113. U. S. district court, southern district of Georgia. In bankruptcy. In the matter of B. B. Barnes, bankrupt. Petition of assignee for order of sale of bankrupt's real estate (to which titles are disputed) under sec. 5063, Rev. Stat. Certified copy. Filed this 14th day of Jan'y, 1876. (Signed) James McPherson, clerk. Hall & Lofton, sols. for petitioner.

Tax Fi. Fa. of April 5, 1869.

STATE OF GEORGIA, *Crawford County:*

To any lawful officer, to execute and return:

You are hereby commanded that of the goods and chattels, lands and tenements, of B. B. Barnes, agt. for Moses Barnes & Brothers, you cause to be made the sum of — dollars and — cents
57 fifty-six mills, it being the amount of their tax for the year 1868, and the further sum of fifty cents for this *fi. fa.*, and make due return thereof to me according to law. Hereof fail not.

Given under my hand and seal this 5 day of April, 1869.

B. C. BAILEY, *T. C.*, [L. S.]
Per A. ANDREWS.

Endorsement: Rogers Dist. Tax *Fi. Fa. vs.* B. B. Barnes, agt. for Moses Barnes & Brothers, $56.00. *Fi. fa.*, 50.

Acknowledgment of Receipt.

Received principal and cost on the within tax *fi. fa.* May the 13, 1869.

A. J. PRESTON, *Sheriff.*

Certificate.

UNITED STATES OF AMERICA, *Southern District of Georgia:*

I, William M. Heyward, deputy clerk of the district court of the United States of America for the southern district of Georgia, do hereby certify that the writing annexed to this certificate is a true copy of its respective original on file and remaining of record in my office.

In witness whereof I have caused the seal of the said court
58 to be hereunto affixed, at the city of Savannah, in the southern district of Georgia, this 12th day of December, in the year of our Lord one thousand eight hundred and seventy-nine and of the Independence of the United States the one hundred and fourth.

[Seal District Court, Georgia.]

W. M. HEYWARD,
Deputy Clerk.

Certified copy.

Answer of John D. Adams, Respondent.

In the United States District Court for the Southern District of Georgia.

In the Matter of BENJAMIN B. BARNES, Bankrupt.

Petitioned as assignee for leave to sell certain lands alleged to be part of the assets of the bankrupt and claimed by Moses Barnes, John & Benjamin Barnes, Patience Lightfoot, Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, & Remillison Barnes, now Remillison Adams.

And now comes John D. Adams for his wife, Eliza Adams, & as att'y-in-fact for the other named parties, and for cause why
59 said petition should not be granted by your honor respectfully shows that it is true that the said Benjamin B. Barnes, now an adjudged bankrupt, did, on the 25th day of September, in the year eighteen hundred and sixty-three, made his deed to said persons for said described lands, a copy of which is hereto attached.

That said deed was not fraudulent & void, but was made in good faith to the said nine (9) named persons, all children of said Barnes, now bankrupt, but the same was but a small portion of what the said Barnes owned at the time. The said Barnes possessed at the time he made this deed of his own property about fifty slaves, worth in good money, before the war, as much as forty thousand dollars, & a portion of whom was the consideration for which the principal, if not the only, debt that Barnes then owed was given or contracted; and besides these negroes he owned a settlement of land, besides the property named in this deed, of about twelve hundred (1,200) acres, of the then value of twelve thousand dollars in good money, & which said Barnes continued to own up to his adjudication in bankruptcy; also the lands with which re-
60 spondent is not familiar and personal property of considerable value, so that the said Barnes was worth at the time he made this deed in property, other than what is contained in said deed, at least fifty thousand dollars in good money, which his debts at the time did not exceed six thousand dollars, & he has created no debts since of any amount, his whole debts at the time of his adjudication in bankruptcy, other than the one before referred

to for the purchase of slaves, amounting to only about six hundred ($600), & this said deed was not fraudulent to hinder, delay, or defeat the collection of any debt due and owing by said Barnes, but was a *bona fide* advancement to his said children, which he could well afford to do at the time out of the great bulk of his estate, leaving a superabundance out of which to pay all his debts then in — or subsequently created & to make similar advancement to his other children also, & said deed was delivered to his said children & recorded in the clerk's office of superior court of Crawford county, where a portion of the land lay, on the — day of ——,
61 1864, & a part in Houston county, where the balance of the land lay, in ——, 1874.

It is true that the said Benjamin B. Barnes was adjudged a bankrupt as alleged in the said petition, but he was not a bankrupt at the time—not insolvent, and there was no occasion for his application for the benefit of said act of Congress; but the said Benjamin B. Barnes was then quite an old man and in very feeble health and laboring under a temporary aberration of mind, and was carried before a United States commissioner, one Joel R. Griffin, & then endeavored by his wife, who is not the mother of the children of said bankrupt named in said deed, but of a younger, to use, have, & swear to his schedules under the direction of second persons without being really conscious of what he was doing, & it was thus by the directions & conduct of these persons that the settlement of lands valued in said deeds was put into his said schedules as his property, when it was not so in fact nor is it now any part of the assetts of the estate of said bankrupt; all of which these respond-
dents expect to show by the evidence of said bankrupt.
62 — has never recovered from said temporary aberration produced by physical injuries shortly before that time; & by other persons these respondents further show that after the execution of said deed as aforesaid, the said Benjamin Barnes delivered the possession of said lands and the improvements thereon into the actual possession of Andrew J. Barnes, one of the donors therein named, who occupied & used the same under said deed for himself & cotenants in com- for several years & until he sold his other property & moved to Texas with his sister, Mrs. Vinson, in 1866, where the other named residents of Texas & donors in said deed had resided for a number of years previously; then he left the premises in the possession of one Joseph Wright to hold for him & the other doners, but who subsequently let Benjamin Barnes into the possession of said lands, to which all the said — were willing or rather did not object, & he, the said Benjamin, continued to hold and use said lands
& property from that time up to the application in bank-
63 ruptcy, not as his property, but as the property of said donors, as named in said deed, always representing said lands not to be his, but that of the aforesaid children; he keeping up the property, making all necessary repairs & improvements on the same, & giving in and paying the taxes thereon as the property of his said children, donors in his said deed, — consenting to his said holding & use & not intending to interfere with him in said use so long as

he might live, although they had the perfect right to do so, his said donors all the time continuing in possession — said deed.

Now that the said Collier, assignee, has taken the possession of said property, depriving their father of the benefit of the same, — insist that he shall account to them for all rents & profits derived from the use and occupation thereof since his appointment & appropriation thereof instead of to said bankrupt's estate, as the same is their property & not that of the bankrupt, & they pray your honor to so direct, & they will ever pray. They also hereto exhibit copy of letter of attorney to said John D. Adams.

RICH'D F. LYNN,
Att'y for Respondents.

64 GEORGIA, *Bibb County:*

You, John D. Adams, do swear that the facts set forth & contained in this your foregoing answer for yourself & the other parties interested in the same *is* true, so far as the same depends on your own knowledge, & so far as the same depends on the knowledge or information derived from others you believe them to be true.

JOHN D. ADAMS.

Sworn to & subscribed before me this 10th day of May, A. D. 1876.

[SEALED.] MORRISON OGDEN,
Notary Pub., Bibb Co., Ga.

EXHIBIT A.

GEORGIA, *Crawford County:*

This indenture, made and entered into the twenty-fifth day of September, in the year of our Lord eighteen hundred and sixty-three, between Benjamin B. Barnes, of the county & State
65 aforesaid, of the one part, and Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, of county ——, Texas, Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, Remillison Barnes, of the county & State aforesaid, of the other part, witnesseth:

That I, the said Benjamin B. Barnes, have, for and in consideration of the sum of ten thousand dollars, to me in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto them, the said Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, A. J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, Remillison Barnes, a certain tract or parcel of land containing seven hundred and eight and a half acres, be the same more or less, known and distinguished as lot No. 197, one hundred and ninety-seven, part of said lot lying in Crawford and part in Houston county; fifty acres of lot No. 196, one hundred and ninety-six;
66 northeast corner of Mossy creek, being the line, one hundred acres; the west half of lot No. 219, two hundred and nineteen;

lot No. 220, two hundred and twenty; the south half of lot No. 221; two hundred and twenty-one; fifty acres, more or less, of lot No. 231, two hundred and thirty-one, the branch being the southeast line, being in the northwest corner of said lot and five acres up and down the creek of lot No. 196, one hundred and ninety-six; also water privilege on number 196, one hundred and ninety-six—said land being and lying in the sixth district of Houston county, with the exception of the 50 acres of lot No. 196 and the northwest — of lot No. 157, which are in the sixth district of Crawford county:

To have and to hold said bargained premises unto the said Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, & Remillison Barnes, their administrators, executors, heirs, and assigns, with all the rights, members, appurtenances, thereunto at-
67 tached or in any manner belonging, to their only proper benefit & behoof, forever; and the said Benjamin B. Barnes, for himself, his administrators, executors, and assigns, will warrant and forever defend the right and title thereof against the claim of themselves or any other person or persons whatever.

In witness whereof the said Benjamin B. Barnes hath hereunto set his hand & affixed his seal the day and year above written.

BENJAMIN B. BARNES.

Signed, sealed, and delivered in the presence of—
D. G. JOHN.
W. G. VINSON.
I. D. HARTLEY, *J. P.*

CLERK'S OFFICE,
SUPERIOR COURT, CRAWFORD COUNTY.

The within and foregoing deed recorded in the clerk's office, superior court of said county, in Book "G," pages 667 & 668, on this 26 March, 1864.

JAMES J. RAY, *Clerk.*

CLERK'S OFFICE, SUPERIOR COURT.

GEORGIA, *Houston County:*

68 Recorded in book "O," pages 47 & 48.
30th Sept., 1874.

D. H. CULLEN, *Clerk.*

Endorsement: No. 1113. U. S. district court, southern district of Georgia. In bankruptcy. In the matter of B. B. Barnes, bankrupt. Petition of assignee for order *to* sale of lands under section 5063, Revised Statutes. Certified copy [of] answer of John D. Adams, respondent. Filed May 12th, 1876. Jas. McPherson, clerk. R. F. Lynn, for respondent.

Afterwards, to wit, at the February rules, 1880, of the United States circuit court for the southern district of Georgia, complainants filed *their* exceptions to answer of defendants in the words and figures as follows, to wit:

Exceptions to the Answer of Defendants.

WM. E. COLLIER, Assignee, Compl'ts,
and
MOSES BARNES *et al.*, Def'ts.
} In Equity.

Bill, &c.

69 Exceptions on the part of complainant to the joint answer of Moses Barnes, Jno. Barnes, Benj. Barnes, Sarah Vinson, Patience Lightfoot, Andrew J. Barnes, Eliza Adams, and her husband, Jno. D. Adams, who claims also to be agent for all the defendants; Remillison Adams, and Martha Cowart, now Martha Hardy.

And now comes the complainant, by his solicitors, Samuel Hall & Andrew Sloan, and excepts to all of the joint answers of defendants from section or subdivision No. 15 thereof, on page —, to the end of said answer, and for grounds of exception say—

1st. The matters therein contained are impertinent.

2nd. That portion of the answer specified above is argumentative & not good pleading.

3rd. It contains matters entirely irrelevant and not responsive to or pertinent to anything contained in said bill.

4th. It set up matters proper for cross-bill, claims that they are in the nature of a cross-bill, and asks the court to treat them as in the nature of a cross-bill, when the court cannot, under the rules of pleading, permit such matters in an answer.

70 And, for the reasons above stated, complainant respectfully asks that all of that portion of said answer above referred [to] be expunged.

2nd.

Complainant excepts to all that portion of said answer in subdivisions No. 1 thereof, appearing immediately after the following, viz: "1st. That they admit the adjudication of Benj. B. Barnes as a bankrupt at the time stated in the bill, 2nd day of April, 1874," down to the end of said subdivision 1, and for cause of exception say—

1st. That said matters contained are impertinent & should not be allowed to stand.

2nd. That the matters therein stated are scandalous.

And the said complainant for the reason stated ask that all of said matters be expunged from said answer by order of this honorable court.

SAMUEL HALL &
ANDREW SLOAN,
Solicitors for the Compl't.

71 Endorsement: No. 171. In U. S. circuit court, southern district of Georgia. February rules, 1880. Wm. E. Coller, assignee of Be'j. B. Barnes, bankrupt, *vs.* Moses Barnes *et al.*, defendants. Exception to the answer of defendants. Filed April 2, 1880. W. N. Heyward, deputy clerk. Sam'l Hall & Andrew Sloan for compl't.

Order to Transfer Cause from Eastern to the Western Division, Southern District of Georgia.

WM. E. COLLIER, Assignee,
vs.
ELIZA A. ADAMS *et al.* } In Equity.

Bill, &c.

It appearing to the court that the foregoing case is now pending in the fifth circuit court of the United States for the southern district of Georgia, and that the defendants in said case now reside in the western division of said district, resided — at the time of the filing of said bill, it is hereby ordered, both parties complainant & defendant thereto consenting, that the clerk of the said circuit court for the southern district of Georgia remove said case, together with all papers therein, to court held for the western division of said circuit court for the southern district of Georgia.

LYNN & GRAHAM,
Sol's for Def'ts.
SAMUEL HALL,
Compl'ts Sol'r.

Be it so.

JOHN ERSKINE,
U. S. Judge.

72 Endorsement: In U. S. circuit court, southern district of Georgia, western division. In equity. Wm. E. Collier, assignee, complainant, & Eliza A. Adams, *et al.*, def'ts. Order to transfer cause to western division. Filed Oct. 5th, 1880. W. P. Ward, clerk.

Afterwards, to wit, on the 12th day of May, 1881, the defendants filed their cross-bill in the words and figures as follows:

Cross-Bill.

MOSES BARNES, ELIZA A. ADAMS, *et al.*, Compl'ts,
vs.
WM. E. COLLIER, Assignee, Def't. } In Equity.

To the judges of the 5th circuit court of the United States for the western division of the southern district of Georgia:

Moses Barnes, Benj. Barnes, Andrew J. Barnes, Patience Lightfoot, William H. Vinson & his wife, Sarah; Remillison Adams, John D. Adams & his wife, Eliza A. Adams; Martha Hardy & Benson Barnes & Betty Shropshire, children & only heirs-at-law of John Barnes, deceased, bring this their cross-bill against William E. Collier, a citizen of said district & State. The assignee of Benjamin B. Barnes, bankrupt, humbly complaining, showeth that the
73 said William E. Collier, as the assignee of Benjamin B. Barnes, a bankrupt, exhibited his original bill in this honorable

court against these complainants, returnable to the April term of the said southern district of Georgia, then held in Savannah, in said district, claiming title to and the possession as such assignee of a tract of land in the counties of Crawford & Houston, in said southern district of Georgia, composed of lots & parts of lots of land as follows, to wit: Lot one hundred & ninety-seven, fifty acres, from the northeast corner of lot one hundred & ninety-six, Mossy creek being the line; one hundred acres from the west half of lot 219, two hundred & nineteen; lot No. two hundred & twenty; the south half of lot two hundred & twenty-one, fifty acres, more or less, from the northwest corner of lot two hundred & thirty-one, the branch being the southeast line; five acres up & down the creek of lot one hundred & ninety-six, containing in the aggregate seven hundred & eight & a half acres, all lying in the 6th, sixth, district of Houston county except the fifty acres of lot 196; one hundred & ninety-six & the northwest corner of lot one hundred & ninety-seven, which are in the sixth district of Crawford county; and the said Collier, assignee in said original bill, claimed said lands as assets of said bankrupt's estate, and that he claimed title to them as such assignee by virtue of the said bankruptcy of said
74 Benjamin B. Barnes, to whom it was alleged said land belonged in his own right up to the adjudication of said Barnes as a bankrupt & the assignment thereof to him as such bankrupt, but that said complainants claimed title to said lands under a deed, copy of which is exhibited to this cross —, dated 25th day of September, 1863, made by said Benjamin B. Barnes to said complainants & one John Barnes, who is now dead, & which they allege to be a voluntary deed, fraudulent & void, as against said assignment under condition of said Benjamin B. Barnes, & that said Benjamin B. had remained in possession of said land continuously from the date of the deed & long previously up to his adjudication in bankruptcy; that said deed was a cloud on his title, & he asked its cancellation, leave to sell said land, & administer in bankruptcy. Complainant- showed that said deed was a *bona fide*, good deed, made upon good & sufficient consideration, & was not void, but only a suitable provision out of his large estate for complainants as a part of his children, having in his hands possession of
75 his own property a large estate sufficient & far in excess for the payment of all debts, leaving an ample & large surplus for himself and the balance of his family; that the possession of said land followed the deed to complainant- as their own said property; that they exercised *by them*, they & their agents, all proper acts of ownership, possession, use, & paying taxes, & that, although at the adjudication of Benjamin B. Barnes a bankrupt he held the possession of said land, he did so on sufferance & by the consent of complainants, as their father & tenant, for them; & that when said Collier took and went into the possession of said land he held titles just as said Benjamin Barnes for complainant-, & not otherwise.

The said Collier, as assignee, has held said land so acquired, as aforesaid, & has received the rent of the same from the first day of January, 1875, down to the present time, amounting, in all, to the

sum of one thousand dollars, or other large sum, which belong- to complainants.

Complainants show that they have been all this time asserting title to said land & contesting the same with the said Collier in the
76 district court of the United States for said southern district of Georgia, as a petition filed by said Collier in said court against these complainants under the laws of Congress asking a sale of said land —. In complainants' answer, *to* which they denied the title of said Collier, as such assignee, to hold or sell said land as assetts of the bankrupt and setting up their said title as valid, these complainants & said Collier were at issue and so continued to the 1 day of December, in the year 1879, when said Collier, by the permission of the said court, withdrew or discontinued his said suit on condition that a bill would be filed at once to settle the title to said land & the rights of the parties & on which the said original bill was filed, & to which complainants immediately replied by answer at large & in full, setting up their titles & claim, all of which *as* still remaining in this honorable court & this said district. Copy of the said petition of said Collier, assignee, in the district court, & complainants' answer thereto, are exhibited
77 to the answer thereto of these complainants, and which said exhibit these complainants now ask your honor to permit them to use as an exhibit to & part of this their cross-bill, with leave to attach copies hereto *of* if deemed necessary by your honors.

These complainants now pray your honor to decree that the said Collier, assignee, deliver the possession of said land to them as their rightful property under their said deed & for the value of the rent of said premises from the first of January, 1875, to the hearing, which, complainants say, was & is the yearly value of one thousand dollars; or, if the court should be of the opinion that he, as such assignee, is only liable for the rent actually received by him, then that he be decreed to account to complainants for such rents as he has actually received; and may it please your honors to grant unto complainant- such other and further relief as to your honors may seem meet & proper. Complainants waive all discovery from said defendants as to any and all matter set out in this their cross-bill.

78 WILLIAM E. COLLIER, *Assignee.*
R. F. LYNN,
Compl'ts' Sol.

EXHIBIT.

GEORGIA, *Crawford County:*

This indenture, made and entered into this the twenty-fifth day of September, in the year of our Lord eighteen hundred and sixty-three, between Benjamin B. Barnes, of the county & State aforesaid, of the one part, & Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, of county ——, Texas; Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, Remillison Barnes, of the county & State aforesaid, of the other part, wit-

nesseth: That I, the said Benjamin B. Barnes, have for & in consideration of the sum of ten thousand dollars to me in hand paid at and before the sealing & delivery of these presents, the receipt whereof is hereby acknowledged, granted, bargained, sold, conveyed, & do by these presents grant, bargain, sell, & convey, unto them, the said Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, & Remillison Barnes, a certain tract or parcel of land containing 708½ acres, be the same more or less, known & distinguished as lot 197, part of said lot lying in Crawford & part in Houston county; 50 acres of lot 196, northeast corner of said lot, Mossy creek being the line; 100 acres, the west half of lot 219; lot 220; the south half of 221; 50 acres, more or less, of lot 231, the branch being the southeast line, being in the northwest corner of said lot, & 5 acres up and down the creek of lot 196; also water privilages on [lot] 196, said land being & lying in the 6th district of Houston county, with the exception of 50 acres of lot 196 & the northwest corner of [lot] number 157, which are in the 6th district of Crawford county; to have & to hold said bargained premises unto the said Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, & Remillison Barnes, their administrators, executors, heirs & assigns, with all the rights, members, appertinances thereunto attached or in any manner belonging, to their only proper benefit & behoof forever; and the said Benjamin B. Barnes, for himself, his administrators, executors, & assigns, will warrant and forever defend the right & title thereof against the claim of themselves or any other person or persons whatever.

In witness whereof the said Benjamin B. Barnes hath hereunto set his hand & affixed his seal the day & year above written.

BENJAMIN B. BARNES. [L. S.]

Signed, sealed, & delivered in presence of—
D. J. JOHN.
W. G. VASSIN.
D. HARTY, *J. P.*

CLERK'S OFFICE,
SUPR. COURT, CRAWFORD CO.

The within & foregoing deed recorded in clerk's office, supr. court, Crawford county, Book G, pages 667 & 668, 26 March, 1864.

JAS. J. RAY, *Clerk.*

Endorsement: In the 5th circuit court of United States, southern dist. of Georgia. Moses Barnes, Eliza A. Adams, *et al. vs.* Wm. E. Collier, assignee. Original bill. Cross-bill. Filed in office May 12th, 1881. W. P. Ward, clerk, by J. Nisbel, deputy.

81 *Equity Subpœna.*

UNITED STATES OF AMERICA, *Southern District of Ga.*, } *ss:*

MOSES BARNES, ELIZA A. ADAMS, *et al.*, Compl'ts, *vs.* WM. E. COLLIER, Assignee, Def't. } In Equity.

Cross-bill.

The President of the United States of America to William E. Collier, assignee of Benjamin B. Barnes, bankrupt, Greeting:

For certain causes offered before the judge of the circuit court of the United States for the western division, southern district of Georgia, in equity, you are hereby commanded and strictly enjoined that, laying all other matters aside, and notwithstanding any other excuse, you personally be and appear at the clerk's office of the said court, wheresoever the same shall then be, at rules to be had on the first Monday in July next, to answer to those things which shall then and there be objected to you in a bill of complaint
82 in a cross-bill filed by the said complainants, and to do further and receive what the said court shall have considered in that behalf, and this you may in nowise omit under a penalty of five hundred dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Macon, in said district, this 13th day of May, in the year of our Lord one thousand eight hundred and eighty-one, and of American Independence the one hundred and fifth.

[L. S. OF THE COURT.] WILLARD P. WARD, *Clerk.*

R. F. LYON,
Compl'ts' Sol.

MEMORANDUM.—The defendant is required to enter appearance in the above cause in the clerk's office on or before the day to which this writ of subpœna is returnable; otherwise the bill may be taken *pro confesso* against him.

WILLARD P. WARD, *Clerk.*

R. F. LYON,
Compl'ts' Sol.

Acknowledgment of Service.

Service of this subpœna acknowledged & all other & further service & notice waived 13th May, 1881.

W. E. COLLIER, *Assignee,*
By SAMUEL HALL, *His Sol.*

83 Endorsement: In the circuit court of the United States for the southern district of Georgia. To July rules, 1881. Moses Barnes, Eliza A. Adams, *et al.*, complainants, and Wm. E. Collier, assignee, defendant. In equity. Subpœna in equity on cross-bill. Filed 13 day of May, A. D. 1881. W. P. Ward, clerk. R. F. Lyon, compl'ts' solicitor.

Afterwards, to wit, at a stated term of the United States circuit court for the western division, southern district, of Georgia, the following order was made by the court and entered of record in the words and figures as follows, to wit:

Order as to Amendment, Cross-Bill, &c.

WM. E. COLLIER, Assignee, Compl't,
and
ELIZA A. ADAMS *et al.*, Def'ts. } In Equity.

Bill for cancellation.

Ordered by the said court that the exceptions to defendants' answer heretofore filed in the cause be overruled & disallowed.

84 That the complainants have leave to file a replication to defendants' answer.

That defendants have leave to file a cross-bill *instanter*, to which the defendants thereto may plead, answer, or demur, not demur-ing above within thirty days from the adjournment of the present term of this court.

That complainants have leave to answer his bill by making Benson Barnes & Betty Shropshire, the children and only heirs-at-law of John Barnes, a defendant named in said original bill, & who was dead at the exhibition thereof, parties defendants in his stead, with leave to them to answer said original bill immediately on appearance having been entered for them by R. F. Lyon, a solicitor of this court, & he consenting to this order for amendment.

That the parties complainants & respondents have leave to take testimony in said cause for ninety days from the adjournment of this term of this court.

It is further ordered that said case stand for trial peremptorily at the next term of this court.

May 13, 1881.

SAMUEL HALL,
Compl't's Sol's.
R. F. LYON,
Def'ts' Sol's.
J. ERSKINE,
U. S. Judge.

85 Endorsement: In 5th circuit court United States for western division of southern district of Georgia. Wm. E. Collier, assignee of B. B. Barnes, bankrupt, *versus* Moses Barnes *et al.* Order, 1, overruling exceptions to defendants' answers; 2, allowing complainant to amend bill; 3, allowing [complainant] to file replication; 4, allowing defendants to file cross-bill; 5, allowing both parties to take testimony; 6, setting down case for trial at next term of the court. Filed May 13th, 1881. W. P. Ward, clerk.

Afterwards, to wit, on the 13th day of May, A. D. 1881, the complainants filed an amendment to *their* bill in the words and figures as follows, to wit:

Amendment to Bill.

In the 5th Circuit Court United States for the Southern District, Western Division, of Georgia. In Equity.

WILLIAM E. COLLIER, Assignee, *vs.* ELIZA A. ADAMS *et al.*

Bill for cancel-ation of deed.

86 Leave of the court being given for that purpose, & the parties, by their solicitors, consenting thereto, the complainant comes and amends his bill by striking out John Barnes as a party thereto, he being dead at the time of the filing of said complainant's said bill, & in substituting for the said John Barnes, as parties defendants to said complainant's bill, Benson Barnes & Betty Shropshire, the children & heirs-at-law of the said John Barnes, & making applicable to them in all other respects the allegations, statements, & charges of said bill, together with prayer, so far as the same would have affected the said John Barnes had he been then in life.

SAMUEL HALL,
Compl't's Sol'r.

Acknowledgment of Service.

Service acknowledged 13th May, 1881.

R. F. LYON,
Def'ts' Att'y.

Endorsement: In the 5th circuit court of the United States, southern district, western division of Georgia. William E. Collier, assignee, *versus* Eliza A. Adams *et al.* Amendment. Filed May 13th, 1881. W. P. Ward, clerk. S. Hall, compl't's sol'r.

87 Afterwards, to wit, on the 13th day of May, A. D. 1881, an agreement of counsel was filed in the words and figures as follows, to wit:

Agreement of Counsel as to Evidence.

In the Fifth Circuit Court for Southern District, Western Division of Georgia. In Equity.

WILLIAM E. COLLIER, Assignee, *vs.* MOSES BARNES *et al.*

It is agreed between complainants and defendants that the testimony taken in the application & proceedings thereon in the district court of the United States for the southern district of Georgia for the sale of the premises in dispute & issue joined thereon by de-

fendants be used on the trial of this cause & the cross-bill in this court, subject only to exception to irrelevancy, or that the same is otherwise illegal.

13 May, 1881.

R. F. LYON,
Def'ts' Sol'r.
SAMUEL HALL,
Compl't's Sol'r.

88 Endorsement: In the United States circuit court. Wm E. Collier, assignee, *versus* Moses Barnes *et al.* In equity. Agreement of counsel as to evidence. Filed May 13, 1881. W. P. Ward, clerk.

Afterwards, to wit, on the 13th day of May, 1881, the complainants filed *their* replication to defendants' answer in the words and figures as follows, to wit:

Replication to Defendants' Answer.

In the 5th Circuit Court of the United States for the Western Division, Southern District of Georgia. In Equity.

WM. E. COLLIER, Assignee, Compl't,

and

ELIZA A. ADAMS *et al.*, Def'ts.

The replication of William E. Collier, assignee, complainant, to the answers of defendants.

89 This replicant, saving & reserving to himself all & all manner of advantage of exceptions to the manifold insufficiencies of said answers, for replication thereunto saith that he will aver & prove his said bill to be true, certain, & sufficient in law to be answered unto, & that said answers of said defendants are uncertain, untrue, & insufficient to be replied unto by this replicant.

All of which matters & things this replicant is & and will be ready to aver & prove as this honorable court shall direct, & humbly prays as in & by his said bill he hath already prayed.

SAMUEL HALL,
Compl'ts Sol's.

Endorsement: In the 5th circuit court United States, southern district, western division of Georgia. William E. Collier, assignee of B. B. Barnes, bankrupt, *versus* Eliza A. Adams *et al.* Replication. Filed May 13, 1881. W. P. Ward, clerk. Samuel Hall, compl't's sol'r.

90 Afterwards, to wit, on the 11th day of June, 1881, Wm. E. Collier, assignee, filed his answer to cross-bill in the words and figures as follows, to wit:

Answer to Cross-Bill.

In the 5th Circuit Court of the United States for the Southern District of Georgia, Western Division. In Equity.

WM. E. COLLIER, Assignee, Compl't,

and

ELIZA A. ADAMS *et al.*, Resp'ts.

The demurrer, plea, & answer of William E. Collier, assignee of Benjamin B. Barnes, bankrupt, to the cross-bill of Eliza A. Adams *et al.*, who were and are defendants to said original bill of complaint.

The said William E. Collier, assignee, & so —, doth demur to the cross-[bill] of the said Eliza A. Adams & others, — for cause of demurrer to cross-bill saith—

1st. That the cross-[bill] aforesaid contains no sufficient allegations, statements, & charges to entitle the said parties therein complaining to the relief therein & thereby prayed, or to any part thereof.

91 2nd. Because said cross-bill is not confined to the subject-matter of complainant's original bill, but introduces new & distinct matters not embraced in said original suit, in this, that said cross-bill seeks an account of the rents & profits of certain land in the hands of complainant in original bill as assignee of Benjamin B. Barnes, bankrupt, & to which the said defendants in said original bill & in their answer thereto & in said cross-bill set up title; whereas this complainant says that the sole purpose of said original bill is the cancellation of the deed under which the defendants set up title, &c.

3rd. Because said cross-bill & the relief therein & thereby prayed is barred in & by the statutes of the United States in such case made & provided, as contained in section 5057 of the Revised Statutes of the United States, the same having been applied for & demanded as shown by the pleadings, after the laps- of more than two years from the accrual of their cause of action, if any they ever had, against this complainant.

Wherefore, & for divers other cause- of demurrer apparent upon said cross-bill, this complainant doth demur thereto, & humbly prays the judgment of this honorable court, whether, &c*o*.

92 And not waiving his aforesaid demurrer, but insisting on the same & each & every part thereof, this complainant doth plead to said cross-bill, and for plea saith that the rights of said defendants, if any they had, against this *defendant*, accrued more than two years before the commencement of any proceedings upon their part to assert the same, to wit, on the first day of June, A. D. 1874, when the said complainant had said premises duly conveyed to him as the assignee of the said Benjamin B. Barnes, bank-

rupt as aforesaid, as will fully appear by the proceedings had in the bankruptcy — of the said Benjamin B. Barnes, reference thereto being had; that the said defendants have instituted no proceedings for the recovery of said premises, or the rents, issues, & profits occruing from the same, until the filing of their said cross-bill in this honorable court, to wit, on the 12th day of May, 1881, & that by a certain act of the Congress of the United States of America contained in section 5057 of the Revised Statutes of the United States, passed, among other things, for the limitation of actions by & against assignees in bankruptcy, it was enacted that "no suit, either at law or in equity, shall be maintainable in any court between an assignee
93 in bankruptcy & a person claiming an adverse interest touching any property or rights of property transferable to or vested in such assignee unless brought within two years from the time when the cause of action accrued for or against such assignee;" & this complainant pleads the matters aforesaid in bar of the said defendants' demands, & prays the judgment of this honorable court thereon; and failing said plea & demurrer, & not otherwise, then this complainant makes answer to said defendants' said cross-bill, & for answer thereunto, or unto so much & such parts thereof as he is advised it is material and necessary for him to make answer unto, answering, admits that he filed his original bill in this cause, as alledged by defendants, & says that the contents of said bill will sufficiently appear from the same, which is of file in this honorable court. Complainant, further answering, reiterates the statements made in his original bill as to the character of the deed made by Benjamin B. Barnes, bankrupt, to the said defendants, & also as to the purpose for which said deed was made, & from information on which he relies this complainant asserts that said deed was not a *bona fide* deed, made upon a good and
94 sufficient consideration, or as a suitable provision for the children of the said Benjamin B. Barnes out of the estate of the said Benjamin B. Barnes; but he says that if said deed was not made with a fraudulent intent it was only because the said Barnes never designed nor intended it to take effect in the lifetime of him, the said Barnes. He denies that the possession of the said land followed the deed to defendants as their own property, or that they, by themselves & their agents, exercised any acts of ownership, possession, or use over the same, or that they paid taxes on the same, or that at the adjudication of the said Benjamin B. Barnes as a bankrupt he held the possession of said land on sufferance & by the consent of defendants as their tenant; but, on the contrary, this complainant says that, so far as he is informed & believes that said Benjamin B. Barnes was in possession of said land at the making of said deed & remained in possession of the same after the making of said deed as he had done before up to the time that this respondent took possession of the same as the assignee in bankruptcy of the said Barnes, *that* the said Barnes never paid any rent to any one for
95 said lands, but used & occupied them as his own, & obtained large credits upon the faith of his being the owner of said premises; & this complainant says that when he took & went into

possession of the said lands he held them under the impression & belief that they were the absolute property of the said Barnes, for that the said Barnes had so returned said lands in schedule to his petition in bankruptcy annexed, & when he turned over possession of the same to this complainant he likewise turned over to him all his deeds & other evidence of title to said land. Complainant admits that he has held said land as stated in this answer & not otherwise, & that as assignee of the said Benjamin B. Barnes, bankrupt, he has received the rents, issues, & profits of the same since the first day of January, 1875; but he denies that said rents, issues, & profits amount to the sum of one thousand dollars, or that the same belonged to the said defendants. Complainant, further answering, says that he had no knowledge that defendants claimed title to said lands until several months after he went into possession of the same as aforesaid, and then for the first time he heard
96 of it from third parties; that neither of the said defendants or any accredited agent of theirs ever did set of any claim to the said lands or make any themselves upon him for the possession of the same until after he had filed his petition in the bankrupt court for the sale of said premises, & the defendants who were made parties to said petition then came in by answer to the same & set up their said claim, to wit, on or about the twelfth (12th) day of May, 1876. Complainant says that by permission of the district court of the United States for the southern district of Georgia he withdrew his application to sell said land without prejudice to either party as to any other proceeding he might be advised to institute touching the subject-matter of said petition; that the order granting this permission was passed on the 29th day of November, 1879, & that this was the only condition upon which said order to withdraw was granted, & he denies that any such conditions as those stated in said cross-bill were made in said order. Complainant, further answering, denies that the annual value of said rents has been one thousand dollars, & he is ready & willing to account for such
97 rents, issues, & profits as have come into his hands whenever he shall be so directed by this honorable court; &, having fully answered, he prays to be hence dismissed, &c.

SAMUEL HALL,
Compl't's Sol.

I, Samuel Hall, of counsel for William E. Collier, assignee of B. B. Barnes, bankrupt, do certify that, in my opinion, the demurrer & plea of the said Collier set forth in this case are well founded in in point of law.

Macon, Ga., 10 June, 1881.

SAMUEL HALL,
Solicitor for Collier, Assignee.

UNITED STATES OF AMERICA,
Southern District of Georgia, Western Division:

At Macon, in said southern district of Georgia, western division, on this the tenth day of June, A. D. 1881, comes William E. Collier,

who on oath says that his foregoing demurrer & plea are not interposed for delay, & that said plea is true in point of facts to the best of his knowledge & belief.

W. E. COLLIER.

Sworn to & subscribed before me this June 10, 1881.

[Seal A. P. Whittle, U. S. Commissioner, So. Dist. of Georgia.]

A. P. WHITTLE,
U. S. Com'r, So. Dist. Ga.

98 UNITED STATES OF AMERICA,
Southern District of Georgia, Western Division:

At Macon, in said district, on this, the tenth (10th) day of June, A. D. 1881, comes William E. Collier, & makes oath that the facts set forth in his foregoing answer are true as therein stated, to the best of his knowledge & information & belief.

W. E. COLLIER.

Sworn to & subscribed before me this June 10th, 1881.

[Seal A. P. Whittle, U. S. Commissioner So. Dist. Georgia.]

W. P. WHITTLE,
U. S. Com'r So. Dist. Ga.

Endorsement: In the 5th circuit court of the United States for the southern district of Georgia, western division. In equity. William E. Collier, assignee of Benj. B. Barnes, bankrupt, complainant, & Eliza A. Adams *et al.*, respondents. Wm. E. Collier's answer to cross-bill. Filed in office this 11th day of June, 1881. W. P. Ward, clerk, by J. M. Nisbet, deputy clerk.

Afterwards, to wit, on the 22nd day of November, A. D.
99 1882, replication to answer to cross-bill was filed in the words & figures as follows, to wit:

Replication to Answer to Cross-Bill.

In the 5th Circuit Court of the United States for the Western Division, Southern District, of Georgia. In Equity.

WM. E. COLLIER, Assignee, *vs.* JOHN D ADAMS *et al.*

Cross-bill.

The replication of John D. Adams & other complainants in cross-bill to defendant's answer to the same.

This replicant, saving & reserving to himself all & all manner of advantages of exceptions to the manifold insufficiencies of said answer, for replication thereunto, saith that he will aver & prove their said cross-bill to be true, certain, & sufficient in law to be answered unto, & that said answer of said defendants is untrue & insufficient to be replied unto by this replicant.

All of which matters & things this — is & will be ready to aver & prove, as this honorable court shall direct, & humbly prays as in & by their said bill he hath already prayed.

R. F. LYON,
Solicitor for Complainant in Cross-Bill.

Endorsements: In 5th circuit court in the western division, southern district, of Georgia. John D. Adams *et al. versus* W. E. Collier, assignee. Replication to defendant's answer to cross-bill. Filed November 22, 1882. W. M. Hayward, deputy clerk.

100 Afterwards, to wit, at a stated term of the United States circuit court for the western division of the southern district of Georgia, begun and holden in the city of Macon, in said district, on the first Monday in October, A. D. 1882—present, the Hon. Don A. Pardee, judge for the 5th judicial circuit, presiding—a decree was rendered and entered of record in the words and figures as follows, to wit:

Decree.

WM. E. COLLIER, Assignee, Compl't,
and
ELIZA A. ADAMS *et al.*, Def'ts. } In Equity.

Bill, &c.

This cause came on to be heard at this term & was argued by counsel, & thereupon [upon] consideration thereof it was ordered, adjudged & decreed as follows:

That the deed from B. B. Barnes, bankrupt, to Moses Barnes, John Barnes, Benjamin Barnes, Andrew J. Barnes, Patience Lightfoot, & Sarah Vinson, Martha Hardy, Eliza A. Adams, & Remillison Adams, conveying to them the following property, to wit: Lot of land
101 one hundred and ninety-seven; fifty acres from the northeast corner of lot No. (196) one hundred & ninety-six; one hundred acres from the west half of lot (219) two hundred & nineteen; lot No. (220) two hundred & twenty; the south half of lot No. (221) two hundred & twenty-one; fifty acres, more or less, from the northwest corner of lot No. (231) two hundred & thirty-one; five acres of lot No. (196) one hundred & ninety-six; also water privilege on lot No. one hundred & ninety-six—all said land being in the sixth (6th) district of Houston county, except fifty acres of lot No. (196) one hundred & ninety-six & the northwest corner of lot No. (197) one hundred & ninety-seven, which are in the sixth district of Crawford county, bearing date 25th day of September, 1863—be delivered to the clerk of this court by the person or persons having the custody of the same, to be canceled, & it [is] further ordered & decreed that said deed so far as it affects the rights of the creditors of said B. B. Barnes, bankrupt, is null & void of effect.

It is further ordered & decreed by the court that William Collier, assignee of said B. B. Barnes, bankrupt, do proceed under the
102 direction of the district court, sitting in bankruptcy, to sell the said lands and distribute the proceeds.

And it is further ordered that the cross-bill filed herein by defendants be dismissed.

And it is further ordered and adjudged that the complainant recover of said defendants all his costs in this behalf expended.

Decree rendered November 25th, 1882.

DON A. PARDEE, *Judge.*

Endorsement: In the 5th circuit court of the United States for the western division of the southern district of Georgia. W. E. Collier, assignee, *versus* Eliza A. Adams *et al.* Decree. Filed Nov. 25th, 1882. W. M. Heyward, deputy clerk.

Afterwards, to wit, on the 25th day of November, A. D. 1882, the defendants filed their petition for a rehearing in the words and figures as follows, to wit:

Petition for Rehearing and Order Thereon.

WM. E. COLLIER, Assignee of Benjamin B. Barnes, B'k'pt,

vs.

MOSES BARNES, BENJAMIN BARNES, JOHN BARNES, ANDREW J. Barnes, Patience Lightfoot, William H. Vinson & his Wife, Sarah Vinson, Remillison Adams, John D. Adams & his Wife, Eliza J. Adams, Martha Hardy, Benson Barnes, and Betty Shropshire.

Bill to cancel deed, remove cloud, &c., and cross-bill of defendants.

The petition of the above-named defendants to the original bill respectfully showeth that a decree has, on the 25th day of November, 1882, in regular term time — by the judge of said court in favor of said complainant, directing a cancellation and surrender of the deed of defendant from the bankrupt Barnes, dated in September, 1863, to them for the premises, as set out in said original bill and attached to answer of defendants, and directing a sale of the premises in controversy by the complainants and the administration of the proceeds of such sale under the bankrupt laws of the
104 United States, and a further decree dismissing the cross-bill of defendants; that your petitioners are advised that the said decree is defective and erroneous in declaring and so decreeing that the complainant was protected in his possession and assured in his title to the premises by operation of the statutory bar as enacted and declared in section 5057 of the Revised Statutes of the United States so as to cut off and defeat the claim and title of the defendants under the said deed and *the* under the evidence in said cause, and in further holding and decreeing that the deed of defendants under which they claim title to said premises was intended by the grantor thereof and so operated as a will and not as a deed, & in further decreeing that the cross-bill of defendants should be dismissed, and in further decreeing that defendants should pay the costs of said proceeding.

That your petitioners humbly submit that they ought to be reheard before your honors in order that said decrees may be reversed or valued or altered in the respect above mentioned and set out.

Your petitioners therefore pray your honors that said
105 causes may be reheard before your honors on such day as it shall please your honors to appoint for that purpose, and that said decree may be reversed or altered in the particulars mentioned, and that such further order may be made in the premises as to your honors shall seem meet.

And your petitioners will ever pray, &c.

R. F. LYON,
Def'ts' Solicitor.

Upon hearing and considering the above application for rehearing it is ordered that the same be allowed and filed and that counsel have sixty (60) days from this date wherein to file with the court their briefs upon said application, and that in the meantime the decree rendered in said cause be suspended and shall not be considered a final decree until the above application for a rehearing shall be heard and determined.

Passed in open court this 25th day of November, 1882.

DON A. PARDEE.

106 Endorsement: In the United States circuit court, southern district of Georgia, western division. William E. Collier, assignee, *versus* John Adams, Benjamin Barnes, *et al.* Petition for a rehearing. Filed November 25th, 1882. W. M. Heyward, deputy clerk.

Afterwards, to wit, at a stated term of the circuit court of the United States for the western division, southern district of Georgia, begun and holden in the United States court-room in the city of Macon, on Monday, the — day of May, A. D. 1883—present, the Honorable H. K. McKay, judge for the northern district of Georgia, presiding—the following order was received from the Hororable Don A. Pardee, circuit judge for the fifth judicial circuit, and ordered entered of record by the court:

Order Overruling Application for Rehearing.

Western Division, Southern District of Ga. In Equity.

WM. E. COLLIER, Assignee, *vs.* MOSES BARNES *et al.*

107 This cause having been reargued on the application for a rehearing made herein, it is now ordered and adjudged that the rehearing be refused and that the decree rendered in this case at the last term of the court do stand as the judgment of the court.

And it is further ordered that defendants be allowed an appeal herein to the Supreme Court of the United States, the same to operate as a supersedeas, on giving bond in the sum of two thousand dollars, with good security, conditioned according to law.

May 15th, 1883.

DON A. PARDEE, *Judge.*

Endorsement: In the 5th circuit court of the United States for the western division, southern district of Georgia. William E. Collier,

assignee, complainant, *versus* Moses Barnes, E. A. Adams, *et al.*, defendants. Bill for cancellation. Order overruling application for rehearing Filed May 16, 1883. Marion Erwin, deputy clerk.

108 Afterwards, to wit, on the 13th day of June, A. D. 1883, the defendants filed their petition for appeal in the words and figures as follows, to wit:

Application for Appeal.

In the Circuit Court of the United States, Southern District of Georgia, Western Division.

WM. E. COLLIER, Assignee,
vs.
MOSES BARNES, BENJAMIN BARNES, JOHN BARNES, ANDREW BARNES, Patience Lightfoot, Wm. H. Vinson and his wife, Sarah Vinson; Remillison Adams, John D. Adams & his wife, Eliza J. Adams; Martha Hardy, wife of William W. Hardy; Benson Barnes & Betty Shropshire, Heirs-at-Law of John Barnes, Dec'd.

Bill in equity and cross-bill of defendants. Decree at October term, 1882. Petition for rehearing and final decree at May term, 1883.

The above-named defendants, conceiving themselves aggrieved by the final decree entered on the twenty-fifth (25th) day of November, in the year 1882, in the above-entitled cause, which was stayed
109 by an order until an application for rehearing could be disposed of, do hereby appeal therefrom to the Supreme Court of the United States, and *he* prays that *his* appeal may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the said Supreme Court.

R. F. LYONS,
Solicitor for Defendants and Appellants.

Afterwards, to wit, on the 13th day of June, A. D. 1883, in the circuit court of the United States for the western division, southern district of Georgia, at chambers, the following order was made and entered of record:

Order Allowing Appeal, &c.

In 5th Circuit Court U. S. for Western Division, Southern District of Georgia. In Equity.

WILLIAM E. COLLIER, Assignee, Compl't,
vs.
JOHN D. ADAMS, ELIZA ADAMS, *et al.*, Def'ts.

Final decree.

The defendants having applied to the court for appeal to the Supreme Court of the United States from the final decree
110 rendered in above case, & the court having allowed said appeal on condition that defendants gave bond in the sum

of two thousand dollars, with good security & the defendants having made & filed such bond, which has been approved, it is ordered that the clerk of this court make out, & transmit to the Supreme Court of the United States an authenticated transcript of the record, proceedings, & the evidence in said cause, and that all further proceedings are hereby superseded until the same is heard & determined by the Supreme Court of the United States.

Done in open court June 12th, 1883.

H. K. McCAY,
U. S. Judge, Presiding.

Endorsement: In the circuit court of the United States, southern district of Georgia, western division. William E. Collier, assignee, &c., *versus* Benjamin B. Barnes *et al.* Application for appeal & order of court. Filed in office June 13, 1883. H. H. King, clerk. J. W. Nisbet, deputy.

111 *Supersedeas Bond.*

Fifth Circuit [Court] of the United States for the Western Division of the Southern District of Georgia.

WILLIAM E. COLLIER, Assignee,

vs.

ELIZA ADAMS, JOHN D. ADAMS, REMILLISON ADAMS, ANDREW J. BARNES, MOSES BARNES, BENJAMIN BARNES, SARAH VINSON, BENSON BARNES, MATTIE SHROPSHIRE, PATIENCE LIGHTFOOT, & MARTHA HARDY.

Know all men by these presents that *in*, Eliza Adams, John D. Adams, Remillison Adams, Andrew J. Barnes, Moses Barnes, Sarah Vinson, Benson Barnes, Mattie Shropshire, Thomas Lightfoot, Andrew Lightfoot, Craven Lightfoot, Mattie Smith, and Dollie Lamont and Martha Hardy, principals, and Wm. Minor, W. T. Westbrook, & J. M. Brown, sureties, *and* held & firmly bound unto William E. Collier, assignee of Benjamin B. Barnes, bankrupt, in the sum of two thousand dollars, to be paid to the said Wm. E. Collier, assignee of Benjamin B. Barnes, bankrupt, his executors, administrators, & successor in office; to which payment, well & truly to be made,
112 we bind ourselves, each of us, jointly & severally, and our & each of our heirs, executors, & administrators, firmly by these presents.

Sealed with our seals. Dated this 9th day of June, 1883.

Whereas the above-named Eliza Adams, John D. Adams, Remillison Adams, Andrew J. Barnes, Moses Barnes, Sarah Vinson, Benson Barnes, Benjamin Barnes, Mattie Shropshire, Thomas Lighfoot, Andrew Lightfoot, Craven Lightfoot, Mattie Smith, Dollie Lamont, Martha Hardy have taken an appeal by order & leave of the court to reverse the decree rendered in the above-entitled suit, in equity, in the fifth circuit court of the United States for the western division of the southern district of Georgia:

Now, therefore, the condition of this obligation is such that if the above-named Eliza Adams, John D. Adams, Remillison Adams,

Andrew J. Barnes, Moses Barnes, Benjamin Barnes, Sarah Vinson, Benson Barnes, Mattie Shropshire, Thomas Lightfoot, Andrew Lightfoot, Craven Lightfoot, Mattie Smith, Dollie Laurant, & Martha Hardy, principals, shall prosecute their said appeal to effect & answer all costs and damages if they shall fail to make good their
113 appeal, then this obligation shall be void; otherwise to remain in full force and virtue.

JOHN D. ADAMS, [L. S.]
ELIZA ADAMS, [L. S.]
REMILLISON ADAMS, [L. S.]
ANDREW J. BARNES, [L. S.]
MOSES BARNES, [L. S.]
BENJAMIN BARNES, [L. S.]
SARAH VINSON, [L. S.]
BENSON BARNES, [L. S.]
MATTIE SHROPSHIRE, [L. S.]
THOMAS LIGHTFOOT, [L. S.]
ANDREW J. LIGHTFOOT, [L. S.]
CRAVEN LIGHTFOOT, [L. S.]
MATTIE SMITH, [L. S.]
DOLLIE LAURANT, [L. S.]
MARTHA HARDY, [L. S.]
By their att's, R. F. LYON. [L. S.]
WM. MINOR. [L. S.]
W. F. WESTBROOK. [L. S.]
J. M. BROWN.

Sealed & delivered in presence of—
A. J. HAMILTON, JR.,
Macon county, as to W. Minor & W. F. Westbrook & J. M. Brown.

STATE OF GEORGIA, *Southern District, Western Division:*

United States Circuit Court. In Open Court.

JUNE 12TH, 1883.

Bond approved.

H. K. McKAY,
U. S. Judge, Presiding.

114 Endorsement: In the 5th circuit court of the United States, southern district of Georgia, western division. Wm. E. Collier, assignee of B. B. Barnes, bankrupt, *versus* Eliza Adams *et al.* Supersedeas bond. Filed in office this June 13th, 1883. H. H. King, clerk, by J. W. Nisbet, deputy.

Evidence Introduced by Complainants.

Interrogatories for David G. John.

In the 5th Circuit Court of the United States for the Southern District of Georgia, Western Division. In Equity.

WILLIAM E. COLLIER, Assignee of Benjamin B. Barnes, Bankrupt, Complainant,
&
ELIZA A. ADAMS *et al.*, Respondents.

Interrogatories to be propounded to David G. John, who resides in the county of Putman & State of Georgia, in said division of said district, & who is a material witness for the complainant in the above-stated cause.

115 Interrogatory 1st. Where did you reside from the year 1860 to 1866? State the county and neighborhood. How far did you live during that time from Benjamin B. Barnes?

Interrogatory 2nd. Did you ever witness any deed during that time purporting to be made by Benjamin B. Barnes to a portion of his, said Barnes', children? If yes, give the names of those children. State what property was thereby mentioned, giving the numbers of the lots of land & the district or districts in which the same were located & also the name by which the tract of land was usually designated & known. Who were the other witnesses to this deed & where was it made?

Interrogatory 3rd. Were any of the children of Benjamin B. Barnes the feof-ees in said deed present at the making thereof; if so, which of them? After the deed was signed by Barnes & attested by the subscribing witnesses, who took possession of the same? Was it delivered to any of the other parties thereto or to any other person to hold for them; if so, to whom?

Interrogatory 4th. Who had said deed recorded by the clerk of the superior court of Crawford county? If you answer B. B. Barnes did, state how you know it. Did you ever see said deed in Barnes' possession after it w[as] purported to be made; if so, when and where was it?

116 Interrogatory 5th. Who was in possession of the land & mill thereon from the time you first knew them up to the time you ceased to have any acquaintance with them? When did you first know these premises & when did your acquaintance with them cease? Who exercised acts of ownership & control over these premises during this period? State what change there was, if any, in the management, control, & possession of the place before the deed enquired about was made & after it was made. Which one of Barnes' children, if either of them, was employed at the mill on the premises before said deed was made? How long did he remain there afterwards? In what capacity was he then? If as employee of Barnes, state why you say so. Who got the proceeds of the mill during that time? Who sold & disposed of its products?

SAMUEL HALL,
Macon, Ga., Compl't's Sol.

Cross-Interrogatories.

Int. 1st. Was not the deed written by Wm. G. Vinson & was not his wife one of the children of B. B. Barnes named in the deed & was he not present when the deed was signed? Was not
117 Andrew J. Barnes, another one of the children named in the deed, present, & was not the deed delivered or handed to Andrew J. Barnes or Vinson after it was signed, or what was done with the deed after old man Barnes signed?

Int. 2nd. Where did Mrs. Martha Cowart, or if she was a widow, then live when the deed was made? Where did Moses Barnes, John Barnes, Benjamin B. Barnes, Jr., and Patience Lightfoot live when this deed was made?

Int. 3rd. Do you know who had this deed recorded in Crawford county, & how did you learn the fact?

Int. 4th. State all you know that will make in favor of the defendants—that is, the Barnes elder children, to whom this deed was made—going to show that it, the deed, was intended as a valid conveyance & for the benefit of the persons therein named, to whom it was conveyed, & what was the object of B. B. Barnes, Sr., in making this deed.

R. F. LYON,
Def'ts' Soli'r.

Endorsement: In 5th circuit court of the United States for southern district of Georgia, western division. Interrogatories for
118 David G. John, of Putnam county. Collier, assignee, complainant, and Eliza A. Adams *et al.*, respondents. Due & legal service of the within interrogatories acknowledged. Copy & all other & further services & notice waived. Consent that answers may be taken without commission. I nominate W. F. Jenkins as commissioner to execute the same. R. F. Lyon, resp'ts' sol.

Depositions of David G. John.

GEORGIA, *Putnam County:*

In the 5th Circuit Court of the United States for the Southern District of Georgia, Western Division. In Equity.

WILLIAM E. COLLIER, Assignee, Compl't,

&

ELIZA A. ADAMS *et al.*, Respondents.

By virtue of [an] agreement between the counsel in the case of William E. Collier, assignee of Benjamin B. Barnes, bankrupt, *versus* Eliza A. Adams *et al.*, pending in the 5th circuit court of the United States for the southern district of Georgia, western division, the undersigned, acting as commissioners, have caused David G. John, a witness in said case, to come before us, who, being duly
119 sworn true answers to make to the annexed interrogatories, deposes & answers as follows:

1st. To the first interrogatory he answers: I resided from 1860 to 1866 in the 6th district of Houston county, Georgia, in the neighborhood of Benjamin Vinson, Josiah Vison, Daniel Sanders, Eliza Smith, & Jones Hammock; also near Benjamin B. Barnes. I lived about one mile & a quarter from Benjamin B. Barnes.

2nd. To the second interrogatory he answers: I did witness a deed during that time, purporting to be made by Benjamin B. Barnes to a portion of his children. The children were Moses Barnes, John Barnes, Andrew J. Barnes, Sarah Vinson, Patience Lightfoot, Martha Cowart, Eliza A. Adams, & Remillison Barnes. I cannot recollect the numbers of the different lots nor districts, except that the portion of the land lying in Crawford county was in the 6th district. The plantation was known as Barnes' Mill place; was partly in Houston & partly in Crawford county; contained about seven hundred acres, & adjoined the lands of Green Vinson, Josiah Vinson, & Joseph Wright. These adjoining persons were called the owners at that time of the adjoining lands. The
120 witnesses to the deed were W. G. Vinson & J. D. Hartty, a justice of the peace. It was made in the fall of 1863.

3d. To the third interrogatory he answers: None of the feoffees, children of Benjamin B. Barnes, were present at the making of the deed, so far as I can now remember. After the deed was signed by Barnes, the maker or grantor, & witnessed, my recollection is that it was then handed to said Benjamin B. Barnes, who took possession of same. It was not delivered to any of the other parties thereto nor to any one for them, so far as I can now recollect.

4th. To the 4th interrogatory he answers: I do not know who had the deed recorded by the clerk of Crawford superior court; I never saw the deed after it was handed to Benjamin B. Barnes at the time it was executed.

5th. To the 5th interrogatory he answers: The land and mill were in the possession of Benjamin B. Barnes from the time I first knew same until I ceased to have any acquaintance with them. Andrew J. Barnes, a son of said Benjamin, was employed in the management of the mill for his father until he moved to Texas. Andrew J. Barnes also worked for himself a one-horse farm on the land. I first knew the premises well when I moved to the neigh-
121 borhood in 1860 or 1861, where I lived until December, 1865, when I ceased to know anything special about them. Benjamin B. Barnes during this period exercised acts of ownership & control over the premises. There was no change in the management, control, or possession of the place before the deed was made & after it was made. Andrew J. Barnes was employed at the mill before the deed was made; he remained until his removal to Texas, which, I think, occurred in the fall of 1865. He was there as employee of his father to superintend the mill. I state this because I often heard his father give directions about the management of the mill, & Andrew always recognized his authority in the matter. Benjamin B. Barnes called the proceeds his & hauled off the same; they were sold & disposed of by Benjamin B. Barnes generally; Andrew also sold meal at the mill, but never claimed it as his own, that I am aware of.

1st. To the first cross-interrogatory he answers: The deed was written by Wm. G. Vinson; his wife was not one of the children named in the deed; he was present when the deed was signed.

122 I have no recollection of Andrew J. Barnes being present at the execution of the deed. I have already answered that my recollection is it was handed to Benjamin B. Barnes when executed.

2nd. To the second cross-interrogatory he answers: I do not remember whether Mrs. Cowart was a wi low at that time or not. I think she was then living with her father; Moses Barnes, John Barnes, Benjamin Barnes, Jr., & Patience Lightfoot were living in Texas at the time the deed was made.

3d. To the 3d cross-interrogatory he answers: I do not know who had the deed recorded.

4th. To the 4th cross-interrogatory he answers: I have answered all I know about the deed & all that I know that would benefit the Barnes elder children. I do not know the object of Benjamin B. Barnes in making it.

DAVID G. JOHN.

Answered, sworn to, & subscribed before us at Eatonton, Ga., this 19th day of July, 1881.

JNO. C. ALLEN, *Com'r.* [L. S.]
W. F. JENKINS, *Com'r.* [L. S.]

123 *Endorsement on Envelope Containing the Foregoing Interrogatories.*

In the 5th circuit court of the United States for the southern district of Georgia, western division. William E. Collier, assignee of Benjamin B. Barnes, bankrupt, complainant, & Eliza Adams —, respondents. In equity. To the clerk of the 5th circuit court of the United States for the southern district of Georgia, western division, Macon, Georgia: Received of W. F. Jenkins, of Eatonton, Georgia, care of the commissioners, this package, July 19, 1881; S. C. Prudden, postmaster, Eatonton, Ga. Signed across seal: W. F. Jinkins, commissioner (L. S.), Jno. C. Allen (L. S.). Received & filed October 3*th*, 1881, W. M. Heyward, deputy clerk.

Interrogatories for William W. Henderson.

In the 5th Circuit Court of the United States for the Southern District, Western Division of Georgia. In Equity.

WILLIAM E. COLLIER, Assignee, Compl't,
and
ELIZA A. ADAMS, *et al.*, Respondents.

124 Interrogatories to be propounded to William W. Henderson, who resides in the city of Macon, county of Bibb, & State of Georgia, in the said western division of the district aforesaid, & who is a material witness for the complainant in the above-stated cause:

Interrogatory 1st. Were you acquainted with Martha Cowart & Andrew J. Barnes; if yes, when and where? What was their relationship to each other? What was the name of their father?

Interrogatory 2nd. Were you ever present at any conversation between Martha Cowart & Andrew J. Barnes about the ownership of certain lands; if yes, what lands were they talking about? State when & where this was. State what he said. To whom did they say these lands belonged?

Interrogatory 3rd. Did Andrew J. Barnes ever occupy & cultivate any portion of these lands before the conversation referred to in the foregoing interrogatory; if so, when & what portion of them? How did he hold them: as proprietor or tenant? If as tenant, from whom did he rent? State what you heard him say about this matter, & when & where it was he said it; & state in addition thereto any other fact or facts within your knowledge going to show that he held these lands as tenant.

125 Interrogatory 4th. When did Andrew J. Barnes remove from Georgia to Texas? Where was he living at the time of his removal? What property did he own just previous to his removal, & what did he carry off with him?

Interrogatory 5th. State who was in possession of these lands during the time you knew them. Who exercised acts of ownership & control over them? Who got the income from them? Who rented them out? If you answer that Benjamin B. Barnes did, state to whom he rented them; when and what other acts of ownership & control he exercised over them. State how many years & between what dates all this was going on, & your means & opportunity for knowing what you testify.

SAMUEL HALL,
Of Macon, Ga., Compl't's Sol.

Cross-Interrogatories.

Int. 1st. Where did you reside at the time of the conversation referred to in 2nd direct interrogatory between Martha Cowart & Andrew J. Barnes, and in what business were you engaged at the time? What was it that brought about the conversation—that is,

how came Andrew J. Barnes & Martha Cowart to talk about
126 the land? Who was present at this conversation? At whose house & at what place was the conversation had? How old were you at the time and what relation are you to these parties, and how came you to be so intimate with them? How did Mr. Madison Jones become possessed of this information and when did he learn about these facts? In what occupation are you engaged now & how long have you been living in Macon?

Int. 2nd. How do you know what lands are involved in this controversy? How did you become possessed of the fact that Andrew J. Barnes cultivated any of said lands, and how do you know or did you learn as to how he held them, whether as proprietor or tenant?

Int. 3rd. In the conversation inquired about in the 2nd direct interrogatory, state fully & particularly what Mrs. Cowart said & what Andrew J. Barnes said.

R. F. LYON,
Def'ts' Sol'r.

Endorsement: In the 5th circuit court of the United States, southern district of Georgia, western division. Interrogatories for Wm. W. Henderson, of Macon, Georgia. William E. Collier,
127 assignee, complainand, and Eliza A. Adams *et al.*, respondents. Due & legal service of the within interrogatories acknowledged. Copy & all other & further service & notice waived. Consents that answers may be taken without commission. W. Dessan & T. H. Willingham and N. E. Harris, Esqrs., are nominated commissioners to take answers. R. F. Lyon, respondent's solicitor.

Depositions of William W. Henderson.

GEORGIA, *Bibb County:*

In the 5th Circuit Court of the United States for Southern Dist., Western Division of Georgia. In Equity.

WILLIAM E. COLLIER, Assignee, &c., Compl't,

vs.

ELIZA A. ADAMS *et al.*, Respondents.

By virtue of an agreement between the counsel in the case of William E. Collier, assignee of Benjamin B. Barnes, bankrupt, complainant, against Eliza A. Adams *et al.*, respondents, pending in equity in the 5th circuit court of the United States for the western division of the southern district of Georgia, the undersigned, acting as commissioners, have caused William W. Henderson, a wit-
128 ness in said case, to come before us, who, being duly sworn true answers to make to the annexed interrogatories, deposes and answers as follows:

I. To the first direct interrogatory witness answers: I was acquainted with Martha Cowart and Andrew J. Barnes in the year

1866, in Crawford county; as well as I remember Andrew J. Barnes was then running a mill in said county. They were brother and sister. Their father's name was Benjamin Barnes.

II. To the second direct interrogatory he answers: I was present at a conversation between Martha Cowart & Andrew J. Barnes about the ownership of certain lands. They were talking generally, just about the time Andrew J. Barnes was going to Texas, and a short while before the sale of Andrew's effects, preparatory to said journey. They were talking about the mill and mill lands. It was in Andrew's house near the mill, considered the miller's house. She (Mrs. Cowart) said she thought the mill and mill lands ought to belong to the older set of children; Andrew then answered, "It is in old Ben.'s possession (that was what he called him) and the younger children will reap the benefit of it;" he further said that he had worked for old Ben. long enough; that he was going
129 to Texas and set up a business for Andrew (meaning himself). She told him that the older set children had been raised up to work, and the younger raised in the parlor, and gave this as a reason why the mill & mill lands should belong to the former. This is about all the conversation I remember. They said the lands belonged to old man Ben. Barnes.

III. To the third direct interrogatory he answered: Andrew J. Barnes at & previous to the time of the conversation referred to did occupy & cultivate a two-mile farm on these lands. He cultivated these lands in the fall of the year; he went to Texas, I know, in 1866, as well as I remember, any way immediately after the war. I helped him gather the crop that fall. Don't know exactly how many acres he cultivated. He held the lands as tenant. I say this because when he was gathering his corn I heard him say about this, standing in front of the mill house, that he wanted to hurry and gather the corn out of the field; that the hogs were destroying it, and that he would have to lose it all, as old Ben. (meaning his father) would have all of his (Ben.'s) part any way. Consequently I say he
130 was tenant of Benj. Barnes. When the corn was hauled in it was put in two cribs. When Andrew left a man by the name of Wright was put in charge; don't know by whom. I only worked there one month, for which Andrew paid me $6.00, which was for half of the month, and Benj. Barnes paid me 6.00 more. I worked at $12.00 per month. After my month was out with Andrew I then went to work with another tenant on the land, whose name was Baily George. I know old man Ben. Barnes furnished the stock to Baily George, and that he (Barnes) got half of what was raised on the farm. This was the same year that Andrew Barnes had farmed a portion of the same lands. I stayed with Baily George only one-half a month, as well as I remember, and then I left the place.

To the 4th interrogatory witness answers: Andrew J. Barnes removed from Georgia to Texas in the fall of 1866, as well as I remem-

ber. At the time of his removal he was living in the house known as the mill tenement house. I can't say what property he owned just previous to his removal; he had a sale of his personal
131 effects only, and he carried off with him nothing, as far as I know, except his bedding & clothes. I know of no other property that he had.

To the 5th interrogatory witness answers: I can only say that Benj. Barnes took more authority over them than anybody else, but I cannot say who was in possession of them. From Ben. Barnes' actions I would say he was the owner; he seemed to control them; he was there every day or two and everybody looked to him for direction and they got their provisions from him—I mean the hands on the place got their provision- from him. Besides this Ben. Barnes rented out the lands next year, but [I] don't know whether as agent or for himself. Ben. Barnes got the rent the year I worked on the place. He rented the place the year after I left there to a man by the name of Joiner; don't know whether Joiner cultivated more land than George had or not. He (Barnes) received half the crop that Baily George made. I helped George gather his corn and saw him turn over half of it to Benj. Barnes. This all occurred in the year 1866, during the fall that I lived with them. I speak of the year
132 according to my best recollection. I am pretty certain it was in the fall of 1866. I lived in the house with the parties & had good opportunities to know what I have stated.

To the first cross-interrogatory witness answers: At the time of the conversation referred to I resided in the house with Andrew J. Barnes. I was engaged in helping them gather their crop. I can't say what brought about the conversation. It was their general conversation about the property, and about Andrew's going to Texas at that time. No one was present at this conversation except Andrew J. Barnes & his wife & Mrs. Martha J. Cowart & myself and Andrew's little children. It occurred in the house in which Andrew Barnes resided. I was a little over 20 years old when it occurred. I am no relation whatever to any of the parties. I was intimate with them, because I was working with them, & living in the house with them. Mr. Jones found out what I knew from this circumstance. Mr. Stephen Collins and myself were standing
133 talking on the corner of Second & Cherry streets, near the telegraph building; I can't exactly tell the date; in the fall of last or the spring of this year, as well as I remember, when Mr. Jones walked up and asked Mr. Collins if Mrs. Cowart did not marry a Hartley. Then I spoke up and told him I did not think she did. Then he asked me if I was acquainted with her. I told him I was, & he then asked if I was acquainted with Andrew Barnes, and whether I ever lived near them. I then told Mr. Jones I lived with Andrew awhile. He then wanted to know at what time, and I told him just before he went to Texas. He then told me he'd have to use me as a witness in a case he had against Ben. Barnes. He asked me to go to Col. Hall's office and state what I

knew. This was all. In a few days after I went to Hall's office & told him these facts. There Mr. Jones learned about these facts. I am now a policeman of the city of Macon. I have been living in Macon nearly three years.

134 To the second cross-interrogatory he answers: I don't know what lands are involved in this controversy only from what I have heard Mr. Jones say. I knew Andrew Barnes cultivated some of the mill lands, because I assisted in gathering the crop, as I have already stated. The only way I knew Andrew Barnes held as tenant of Ben. Barnes was from Andrew's conversation and Ben. Barnes' conduct, as I have already stated. Andrew Barnes also said he got one-third of what the mill made for attending to it. I can't say I know whether Andrew held the lands as owner or tenant. I have stated all I know. I learned nothing further than what I have stated.

To the third cross-interrogatory he answers: I have already stated in my answer to the second direct interrogatory all that I remember that Mrs. Cowart said or that Andrew Barnes said. It was their general talk while I was with them.

W. W. HENDERSON.

Answered, subscribed, and sworn to before us, at Macon, in Bibb county and the State of Georgia, this the 26th day of July, 1881.

THOMAS WILLINGHAM, [L. S.]
Commissioner.
WASHINGTON DESSAN, [L. S.]
Commissioner.
N. E. HARRIS, *Commissioner.* [L. S.]

135 *Endorsement on Envelope Containing Foregoing Depositions.*

In equity. In the 5th circuit court of the United States for the western division of the southern district of Georgia. William E. Collier, assignee of Benjamin Barnes, bankrupt, complainant, *vs.* Eliza A. Adams *et al.*, respondents. To the hon. clerk of the 5th circuit court of the United States for the western division of the southern district of Georgia. Macon, Georgia. Postmarked Macon, Ga., June 26th. Received, Macon, Ga., from N. S. Harris, one of the commissioners, for transmission. Wm. W. Brown. Signed, across seals, Thomas Willingham, com'r; Washington Dessan, com'r; N. S. Harris, com'r. Received and filed Oct. 3, 1881. W. M. Heyward, deputy clerk.

Interrogatories for William E. Collier.

In the 5th Circuit Court of the United States, Southern District of Georgia, Western Division. In Equity.

WILLIAM E. COLLIER, Assigne-, &c., Compl't,

&

ELIZA A. ADAMS *et al.*, Respondents.

136 Interrogatories to be propounded to Wm. E. Collier, who resides at Fort Valley, in the county of Houston & State of Georgia, in said western division of the southern district of Georgia, & who is a material witness for the complainant in said cause.

Interrogatory 1st. How long have you known the premises in dispute? Who was in possession of the same when you first knew them? If you answer Benjamin B. Barnes, state how long he was in possession, what acts of ownership he exercised over them during all or any portion of that time, & when & to whom & under what circumstances he delivered possession of the same.

Interrogatory 2nd. If, in answer to the foregoing interrogatory, you state that the possession was delivered to you, state in what capacity you received & held the possession, why you took possession, who turned it over to you, & what papers, if any, connected with the title to the lands in question was turned over to you, & by whom.

Interrogatory 3rd. How long had you been in possession of these lands as assignee of B. B. Barnes, bankrupt, before you heard of any counter-claim, & from whom & when did you first hear
137 of this claim? When did respondents, or any of them, first set up any claim to these premises or any part thereof? State fully & particularly.

Interrogatory 4th. What demand, if any, have said respondents, or any or either of them, ever made upon you for these lands, or what demand for the possession has ever been made by any person acting on their behalf for the same? When was such demand made, & by whom? Where did respondent, Eliza A. Adams, live during the time you were in possession of this property? Where did John D. Adams live during the same time? How often did they visit B. B. Barnes & his family during that time? What was their means & opportunity of knowing of your possession & of the circumstances under & the purposes for which you held? State fully every fact & circumstances going to show they & others of respondents had such knowledge, & going to show their acquiescence in your possession.

Interrogatory 5th. What demands, if any, have you ever paid out of B. B. Barnes' estate for work & labor done on the premises in dispute? State the amount paid, to whom, & when, & what knowledge the family, or any of them, had of such payments, & what objections, if any, they made to the same. What proof of claim
138 for like labor done on the premises have been filed, & by whom? State how you identify such proof with labor done

on the premises. Relate every fact & circumstance you may know going to show that the land in dispute was at the time of his adjudication in bankruptcy the property of B. B. Barnes & was not the property of respondents.

SAMUEL HALL,
Of Macon, Ga., Compl't's Sol.

Cross-Interrogatories.

Int. 1. Give a detailed statement of the rents you have received from or on account of the lands, mills, & other property involved in this proceeding for each year since you took possession of it as assignee.

Int. 2. To whom did you rent the mills in 1874, 1875, 1876, 1877, 1878, 1880, & 1881? Answer specially as to each year. What rent did you receive from the mills, each, over & above what was taken out for repairs each year & state what was allowed each year for repairs out of the rent? Did you pay anything out for repairs beyond what was taken from rents; if so, what, to whom, & when.

139 How much corn did you receive from the mill for each of the years named for rent, & from whom & what did you sell the same for? How much meal did you receive from the mill for rent for each of the years & what did you receive for it? How much did — county com'r pay you for crop-ing each year & how was this crop-ing kept up; was it not kept up from the mill? What did you realize from cotton received for rent?

Int. 3. Did not Peterson Jordan, a colored man, occupy the land for rent from '74 to '78, inclusive, under a contract to pay 3 bales middlings—500 lbs., & did he not comply with his contract? What did you receive for this cotton? Did you allow more than -7.50 out of these rents for repairs, & was not this for 1,500 rails put up by him? Did not said Peterson allow you something for rent of land around the house—say $80—or how much; was not this expended on repairs or what was done with —?

Int. 4. How much rent did you receive in money, corn, & meal from W. H. Jones while he was there, & what did you realize from this? Did you not agree to pay Jones $100 to put in the waste way, & did you ever pay this?

140 Int. 5. How much corn & meal did Thomas Thomas, the present mill tenant, pay for rent of mill from Sept. to 30 Dec'r, 1879, and what did you realize from it? How much did you receive from him in 1879, & what did you realize from that? What did Green Graham pay for rent in 1880, & what did you realize from that, & what is Thomas paying for the mill now? What did you get for the bale of cotton paid you by Henry Davis for rent in 1874?

Int. 6. How much timber did you sell off this land to Harper & Murray for saw-logs? When did you sell & what did you receive for it? To whom did [you] sell the mill rocks & what did you get for them?

R. F. LYON,
Def't's Sol'r.

Endorsement: In the 5th circuit court of the United States, southern district of Georgia, western division. Interrogatories for William E. Collier, of Fort Valley, Georgia. Collier, assignee, complainant, and Adams *et al.*, respondents. Due and legal service of these interrogatories acknowledged. Copy & all other & 141 further service and notice waived, & consent that the same be taken without commission. We nominate commissioners to execute these interrogatories. R. F. Lyon, solicitors for respondents.

Depositions of William E. Collier.

STATE OF GEORGIA, *Houston County:*

By virtue of an agreement between the counsel in the case of W. E. Collier, assignee of B. B. Barnes, bankrupt, *vs.* Eliza A. Adams *et al.*, pending in the fifth circuit court of the United States, southern district, western division, the undersigned, acting as commissioners, have caused W. E. Collier, witness in said case, to come before us, who, being duly sworn true answers to make to the annexed interrogatories, deposes and answers as follows:

1. To the first interrogatory he answers: For sixteen years; B. B. Barnes. He was in possession of the property in dispute when I first knew it in 1864, and he remained in the possession of the same until June the 1st, 1874, when he went into bankruptcy. During this time he managed and controlled the property as his own. 142 He cultivated this land with the same stock and labor that he did his other lands, and carried the crops raised on this land to his crib and gin-house at home as he did the crops from his other lands. I have often seen him at the mill superintending and giving directions generally. Knew him once to build and repair the mill-dam with his farm laborers when part of it washed away, and I have known him to solicit grinding for the mill when he was in possession of the same. On June 1st, 1874, I was elected assignee of B. B. Barnes, bankrupt.

2. To the second interrogatory he answers: As assignee I took possession of all the estate, real and personal, of said bankrupt, containing his schedule of assets, by virtue of a deed of assignment made to me as assignee by the register in bankruptcy. The property in dispute was set out and described in said schedule as a part of the assets of B. B. Barnes, bankrupt. I found L. S. Evans, son-in-law of B. B. Barnes, in charge of the mill under contract made with B. B. Barnes for that year, 1874. B. B. Barnes himself had rented out part of the land and was cultivating the balance 143 on shares with tenants. I applied frequently to B. B. Barnes for the titles to the property in dispute and he promised to give them to me, but put me off from time to time upon the plea of his bad health until he finally died, and I have never been able to get them.

3. To the third interrogatory he answers: About one year after I had been in possession of the property Aden H. Barnes, son of B. B. Barnes, when in my office, said that the older set of children of

B. B. Barnes, most of whom were in Texas, would set up a claim to this property whenever I attempted to sell it. The first notice that I ever had of any claim set up by respondents to this property was in the spring of 1876. I think about May of that year.

4. To fourth interrogatory he answers: No demand has ever been made upon me for the possession of the land in dispute by the respondents themselves or by any one acting for them. Eliza A. Adams and John D. Adams have both resided in Macon county, an adjoining county to this, Houston county, ever since I have had possession of the property. I don't know that Mrs. Eliza A.
144 Adams has visited B. B. Barnes more than twice during this time, but Jno. D. Adams has visited him frequently and passed by and through the property in dispute in going to & from B. B. Barnes' residence. I have had numerous conversations with Jno. D. Adams in the city of Macon, Montezuma, Fort Valley, and Oglethorpe about the property in dispute and my efforts to subject it to the debts of the creditors.

5. To fifth interrogatory he answers:

1874, July 25th.—E. A. Moody's ac., 1.20; Oct. 2nd, Miller & Harris' ac., 5.30; Oct. 10th, Perterson Jordan's ac., 3.00.

1875. April 1st—Gray Bros.' ac., .50; April 5th, Miller & Harris' ac., .75; July 15th, L. S. Evans, prefer-ed claim, $50.00, and cost for proof of the same, $2.00; Dec. 2nd, A. Bryant, for repairs on mill, 10.25; Dec. 10th, Peterson Jordan, for repairing fence, 14.50.

1876, Jan. 8th.—L. S. Evans, work at the mill, 2.50; Jan. 15th, .50 for nails; Jan. 27th, A. J. Owens, work on the mill, 4.00; April 26th, D. H. Houser, one cast-iron water-wheel for mill, 19.00; April 26th, N. W. Cook, putting in water-wheel & working at
145 the mill, 16.50.

1877, M'ch 20th.—Day hands for work at mill, 11.50; Aug. 10th, day hands for work at the mill, 13.40; Dec. 5th, for five shovels, 5.00; Dec. 19th, Thos. Thomas & day hands putting in wasteway and work on dam, $144.70.

1878, M'ch 30th.—E. A. Moody's ac., 2.00; June 6th, Jones & Thomas and day hands for building mill-dam & wasteway, 136.50; June 6th, W. E. Collier, 6½ days' hauling with a double team & driver, at 3.00 per day, 19.50; Nov. 14th, Peterson Jordan, for splitting & putting up rails, 27.50; Nov. 23rd, Wm. Brown, work on mill, 7.60; George Harris, 2.65; Edward Boothe, 2.75; March Hampton, 1.20; Nov. 24th, A. H. Miller's ac., 5.00; Nov. 22nd, W. H. Jones, putting in new wasteway, 104.00; Nov. 24th, Tom Brown, 2.80; Don, Henry, & Esrick, 15c. each (45); Nov. 24th, A. N. Murray's ac., 1.20; Dec. 18th, 6 days' hauling at mill with double team and driver, at 3.00, 18.00.

1879, Jan. 1st.—A. H. Miller's ac., 5.40; Nov. 4th, N. C. Winslow, for att'y fees for collecting rent from W. H. Jones, 10.00; Nov. 24th, one day's hauling at mill with double team & driver, 3.00.

146 1880, Feb'y 8th.—Gray Bros., half bushel & peck measure 1.50; March 10th, Caskart & Curd, belting & whang leather for mill, 5.00; June 1st, elevator cups for mill, 90 cts.; S. E. Basset, lumber for mill, 1.25; A. W. Murray, nails, 60 cts.; June 8th, B. G.

Mulkey. work on the mill, 3.75; Dec. 15th, O. H. Miller's ac., 2.00. On Dec. 14th, 1874, I paid F. D. Downs $191.15 for services rendered as ag't in looking after and taking care of the bankrupt estate generally for that year, including the property in dispute, and on Nov. 1st, 1875, I paid J. B. Clarke 110.00 for like service for that year. At the first meeting of creditors L. S. Evans proved his claim *vs.* B. B. Barnes for $300.00 for services rendered B. B. Barnes in 1874 as miller at his mill in Houston county, and on July 15th, 1875, I paid him $50.00 on his lien as preferred creditor, and two dollars for proving his claim as above stated; on 22d Dec., 1874, I paid $59.00 taxes on this property, which had been returned for taxes by B. B. Barnes in the early part of the year & prior to his bankruptcy, and since my election as assignee I have returned this property for taxes each year and paid taxes on the same, total amount of which is 148.75.

147 Jno. D. Adams knew of the most of these payments & expenses. I have never heard any objection made by him to them. In Fort Valley, in the summer of 1878, B. B. Barnes, while speaking to me of the dilapidated condition of the mill & wasteway and the difficulty in keeping the same from washing away in heavy rains, said that if he had kept the mill property a year or two longer he intended to raise the mill-dam, tear out the wasteway, and put in a new one at the end of the drain, change the running of the creek below the mill so as to prevent the water backing up, covering the water-wheel & hindering him from grinding, and would "fix it up so that I would not know it."

Answer- to Cross-Interrogatories.

1. To the first cross-interrogatory he answers: 1874, I received for rent $165.30; on mill ac., $38.45; in 1875, rents, $170.50; mill ac., $75.10; 1876, rents, $123.75; mill ac., $64.00; 1877, rents, $130.20; mill ac., $105.60; 1878, rents, $116.63; mill ac., $94.90; 1879, rents, $43.20; mill ac., $18.70; 1880, rents, $95.00; mill ac., $21.60.

148 The mill was run but a small part of 1879 and 1880. The above amounts are not all that the mill made in any one of the years, although it was not in operation for from 2 to 6 months in each year, and a great part of my half of the toll was paid out for repairs and work on the mill by the miller as they were needed, the above amounts being what I received from my half of the toll after such payments.

2. To the second cross-interrogatory he answers: I did not rent the mill for either of the years mentioned, except for the year 1881. On the 14th day of Feb. I rented for the balance of the year to T. J. Thomas for $5.00 per month; but the mill broke down soon after, and up to this time I have received nothing from him. Previous to this I tried to run the mill myself, paying a miller one-half of the gross proceeds from the mill, I paying all expenses, and found it difficult to secure a miller's services even on those liberal terms. There was no amount set apart out of the proceeds of the mill for repairs. I tried to make them as they were needed.

149 The mill-dam was a public road with two bridges across it. The county commissioners paid me on June 24th, 1878, $50.00 and Jun. 5th, 1880, $20.00 for keeping up these bridges. Please see 1st cross-interrogatory as to price received for meal & corn and amount realized from cotton.

3. To third cross-interrogatory he answers: He did. As to what I received for cotton each year please see 1st cross-interrogatory. I paid him while he occupied the land $45.50 for repairs. Peterson Jordan did not allow me anything for rent of land, but I rented the land to him, and he cultivated all the land he rented.

4. To fourth cross-interrogatory he answers: I received only one bag of cotton from W. H. Jones and sold it for $43.24, and I got this by distress warrant. I received only 22 bushels of meal & corn and sold it at 85 cts. per bushel. I paid him $104.00 for putting in wasteway.

5. To fifth cross-interrogatory he answers: Thos. Thomas was not miller in 1879; W. H. Jones was miller part of that year. Green Graden paid me 1,024 lbs. cotton in 1880, which I sold for $95.00; Thomas pays $5.00 rent per month for mill. I received $56.55 for cotton, paid by Henry Davis for 40 acres of land; but there
150 were only 7 acres of it that belonged to the land in dispute.

6. To sixth cross-interrogatory he answers: I never sold any timber to Harper and Murray, but did have them to saw lumber from timber on this land to put up wast- way at the mill, and paid them in meal from the mill for sawing the lumber. In the fall of 1880 I sold T. O. Vinson a set of mill-rock for $20.00, but they were not a part of and have no connection with the property in dispute.

W. E. COLLIER.

Answered, subscribed, and sworn to before us, at Fort Valley, Ga., this the 8th day of Aug., 1881.

ALONZO C. RILEY, [SEAL.]
Commissioner.
N. C. HARRIS, [SEAL.]
Commissioner.

Endorsement on Envelope Containing Foregoing Depositions.

In equity. In the fifth circuit court of the United States for southern district of Georgia, in the western division. William E. Collier, assignee of Benj. B. Barnes, bankrupt, *vs.* Eliza A. Adams, *et al.* Received of A. C. Riley, one of [the] commissioners, the within package, to be forwarded by due course of mail. Fort Valley, Ga., Aug. 9th, 1881. Geo. W. Maddox, P. M. To the clerk of
151 the fifth circuit court of the U. S. for the southern district of Ga., in the western division. Macon, Bibb county, Ga. Postmarked Fort Valley, Ga., Aug. 9th. Registered No. $\frac{6}{5}\frac{4}{7}$. Signed across seal, H. C. Harris, commissioner. Alonzo C. Riley, commissioner. (Seal.) Received and filed Oct. 3rd, 1881. W. M. Heyward, deputy clerk.

Evidence Introduced by Defendants.

Interrogatories for Andrew J. Barnes.

UNITED STATES OF AMERICA:

In the Fifth Circuit Court of the U. S. for the Southern District of Georgia. In Equity.

WILLIAM E. COLLIER, Assignee of B. B. Barnes, Bankrupt,

vs.

ELIZA A. ADAMS, ANDREW J. BARNES, & Others.

Interrogatories to be exhibited to Andrew J. Barnes, a material witness for himself and the other defendants in the above
152 cause, and who resides near Alvarado, in the county of Johnson and State of Texas.

Int. 1st. Look at the annexed copy [of] deed and state whether that is a copy of any original deed; if yea, state who made the original deed & to whom was it made. Who signed the original deed & who were the witnesses to it? Where were you when it was made? When it was made and signed to whom was it delivered, and by whom was it delivered, and how long after the deed was signed, &c., before it was delivered?

Int. 2nd. Who took the possession of said property described in said deed after the deed was executed & delivered? If you say that you took the possession, state when you did take such possession and for whom did you take the possession of said property?

Int. 3rd. How long did you retain & hold the possession of this property under this deed, and when did you quit it, and why did you quit the possession?

Int. 4th. To whom did you account for the rent of said property when it was in your possession; that is, if you accounted to any one, & how much did you so account for, and when?

153 Int. 5th. When you quit the possession & moved off to whom did you turn over said possession; that is, who did you put in possession of said lands and on what terms did you put such person in such possession?

Int. 6th. How long did such person remain in the possession of said lands?

Int. 7th. Has there been any accounting to you & the balance of the persons to whom said deed was made for rent of said premises after you left it; if so, who made such accounting & when & for what years?

Int. 8th. For whom did you understand that the tenant in possession was holding these lands up to the time that these lands were claimed by the assignee in bankruptcy?

Int. 9th. After the deed was made & delivered when was it first recorded, and who had such record made?

Int. 10th. When you turned over the possession of said land & premises or put a new tenant in & moved off, to whom did you de-

liver the original deed of the annexed copy, and why & for
154 what did you deliver such deed to said person, and who has had the control of said deed since that time, within your knowledge?

Int. 11th. What were Benjamin B. Barnes' reasons for making this deed to you & your brothers & sisters; what induced him to do so? What did he say at the time as to the causes or reasons that influenced him to make this deed?

Int. 12th. What improvements, houses, mills, fields, &c., were on these lands at the time this deed was made; what was the value of the place with its improvements at that time; what was its annual value for rent?

Int. 13th. What other property did Benjamin B. Barnes have at the time he made this deed other than the property conveyed? State the lands, negroes, personal property, as near as you can recollect its value at that time.

Int. 14th. What debt did the said Benjamin B. Barnes owe at that time; what was the amount of his debts at that time, & how did this amount compare with the value of the balance of his property other than these lands; what were your means of knowing what property he had, its value, & the debts he owed?

155 Int. 15th. What was the amount of the debt Benjamin B. Barnes owed at that time to Madison Jones; when was it given, & for what was it given?

Int. 16th. Whether or not, after taking out the property conveyed in this deed, was the balance of the property of said Benjamin B. Barnes sufficient to pay all his debts or insufficient; if sufficient, how much, if any, more than sufficient?

Int. 17th. State all you know that will make in favor of defendants.

R. F. LYON, *Deft's' Sol.*

Cross-Interrogatories.

1st Cross-interrog. If you state that the deed was delivered to you you will also state whether it was delivered at the time it purports to bear date and whether it was delivered in the presence of all or any of the subscribing witnesses thereto; if not in the presence of all, mention the names of either of them who was present at the delivery; when and where and by whom was this deed written?

156 When and where was it delivered? What was Benjamin B. Barnes' condition as to health when this deed was written; and what was it when it was delivered?

2nd Cross-interrog. Were you not in possession of the property covered by the deed prior to the execution of the same? How long had you been in possession before that time? Was there any visible change in your possession after the execution of this deed?

3rd Cross-interrog. When you left this place and went to Texas did not Josias R. Wright go immediately into possession?

4th Cross-interrog. Since you left the place and removed to Texas have you ever exercised any personal supervision or control over it

or in any manner concerned yourself with the management of it? Have any of the other parties to whom said land purports to be deeded ever been in possession of the same?

5th Cross-interrog. Did you not, in answer to interrogatories taken out in a case pending in the district court of the United States for the southern district of Georgia, wherein William
157 E. Collier, assignee in bankruptcy of Benjamin B. Barnes, was petitioner and you and others were respondents, say, in reply to the first cross-interrogatory, which was as follows: "Who had possession of the deed inquired about when you left Georgia in the winter of 1866? In whose possession had it been before that time? Who had it recorded in Crawford county?

"Ans. 1st. I do not know whose possession. It had been in my and William G. Vinson's, who were executors of the will of Benjamin B. Barnes; that was written and bears the same date with the deed. I don't know who had it recorded."

Was not this answer taken before Philip T. Allin and W. Poindexter, in Johnson county, Texas, on the 6th of Jan'y, 1877?

Was it not written out by yourself?

Is not the deed therein referred to the same deed about which you are now interrogated, and was there not a copy attached to the interrogatories in that case the same as in the present case?

6th Cross-interrog. Did you not at the same time and place
158 and before the same commissioners in the same case answer to a portion of the second cross-interrogatory propounded to you, namely: "When you [were] about to leave Georgia for Texas did not James N. Jones have you under arrest under a *casa*, and did you not in Fort Valley, on or about the 6th day of December, state to him that you had no property in Georgia, and that if he would release your person you would give James Hardison as security for the debt?

"Ans. 2d. If he had me under arrest I did not know it. I did, having formerly transferred my right to the land transferred in said deed. I did not. If James Hardison went my security he did it without my consent."

Was and is not your answer about the transfer of your right to the land conveyed by the deed true?

When, to whom, and by what conveyance did you transfer your right in and to said land?

7th Cross-interrog. Who is present at the taking of the present interrogatories?

SAMUEL HALL,
Compl't's Sol.

Complainant's solicitors object to the eighth direct interrogatory for the reason that it seeks to give hearsay in evidence.
159 Also to the 11th direct interrogatory, because the evidence sought thereby is irrelevant.
Also to the 16th direct interrogatory, because it is leading.

SAMUEL HALL,
Complainant's Sol'r.

Copy of Deed.

GEORGIA, *Crawford County:*

This indenture, made and entered into this the twenty-fifth day of September, in the year of our Lord eighteen hundred and sixty-three, between Benj. B. Barnes, of the county and State aforesaid, of the one part, and Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, of —— county, Texas; Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, Remillison Barnes, of the county and State aforesaid, of the other part, witnesseth: That I, the said Benj. B. Barnes, have, for and in consideration of the sum of ten thousand dollars to me in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto
160 them, the said Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, A. J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, [and] Remillison Barnes, a certain tract or parcel of land containing seven hundred eight and a half acres, be the same more or less, known and distinguished as lots No. (197) one hundred and ninety-seven, part of said lot being in Crawford and part in Houston county; fifty acres of lot No. (196) one hundred and ninety-six; northeast corner of said lot, Mossy creek being the line, one hundred acres; the west half of lot No. (219) two hundred and nineteen; lot No. (220) two hundred and twenty; the south half of lot No. (221) two hundred and twenty-one; fifty acres, more or less, of lot No. (231) two hundred and thirty-one, the branch being the southeast line, in the northwest corner of said lot, and five acres up and down the creek of lot No. (196) one hundred and ninety-six; also water privilege on — No. (196) one hundred and ninety-six—said land lieing & being in the sixth district of Houston county, with the exception of the 50 acres of lot No. (196) and
161 the northwest corner of lot No. 157, which are in the sixth district of Crawford county: To have and to hold said bargained premises unto the said Moses Barnes, John Barnes, Benj. Barnes, Patience Lightfoot, Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, & Remillison Barnes, their administrators, executors, heirs, & assigns, with all the rights, members, and appurtenances thereunto attached or in — manner belonging, to their only proper use, benefit, and behoof forever. And the said Benj. B. Barnes, for himself, his administrators, executors, and assigns, will warrant and forever defend the right and title thereof against the claim of themselves or any other person or persons whatever.

In witness whereof the said Benj. B. Barnes hath hereunto set his hand and affixed his seal the day and year above written.

(Signed) BENJ. B. BARNES. [L. S.]

Signed, sealed, & delivered in the presence of—
D. G. JOHN.
W. G. VINSON.
J. D. HARTTY, *J. P.*

CL'K'S OFFICE, SUP. C'RT,
CRAWFORD COUNTY, GEO.

The within and foregoing deed recorded in the clerk's
162 office, superior court, of said county, in Book "G," pages 667 & 668, on this 26 March, 1864.

JAMES J. RAY, *Clerk.*

GEORGIA, HOUSTON COUNTY,
CLERK'S OFFICE, SUPERIOR COURT.

Recorded in Book "O," pages 47 & 48, 30 Sept., 1874.

D. H. CULLEN, *Cl'k.*

Acknowledgment of Service.

Due & legal service of the within interrogatories acknowledged, copy & all other & further service & notice waived, & consent that the answers be taken without commission. We nominate W. Poendexter, Esq., as commissioner to take answers to these interrogatories. Wm. Peendexter's residence is Cleburne, Johnston county, Texas. 20 March 1880.

SAMUEL HALL,
Compl't's Sol'r.

Endorsement: In the 5th circuit court United States for the southern district of Georgia. In equity. William E. Collier, assignee, *versus* Eliza Adams and others. Interrogatories for Andrew J. Barnes. Original.

163 *Depositions of Andrew J. Barnes.*

STATE OF TEXAS, *County of Johnson:*

In the Fifth Circuit Court of the United States for the Southern District of Georgia. In Equity.

WILLIAM E. COLLIER, Assignee of Benj. B. Barnes, Bankrupt,

vs.

ANDREW J. BARNES, MOSES BARNES, ELIZA ADAMS, & Others.

By virtue of an agreement between counsel for complainant and defendant- in the above cause, we have caused Andrew J. Barnes, the witness named in certain interrogatories sued out by the defendants in the above cause and hereto attached, to come before us and, being duly sworn, to true answers make to said interrogatories.

The said Andrew J. Barnes to the 1st direct interrogatory:

Answer to first int., to-wit:

Yes; the annexed copy of deed is a true copy of original deed made by Benjamin B. Barnes to Andrew J. Barnes, Moses Barnes, Eliza Adams, John Barnes, Benjamin Barnes, Patience Lightfoot, Sarah Vinson, Martha Cowart, Remillison Barnes, signed by Benjamin B. Barnes, Sen'r, witnessed by D. G. John, W. G. Vinson
164 and J. D. Hartty, justice of the peace. The deed was made at Benjamin B. Barnes' house, in Crawford county, Georgia.

The deed was delivered to Andrew J. Barnes and W. G. Vinson by Benjamin B. Barnes, Sen'r, the same day the deed was signed, in presence of witnesses named.

Int. 2nd.

Answer. I, Andrew J. Barnes, was in possession of said property at the time the deed was made under an agreement that said deed would be made; consequently I immediately took possession for myself and as agent for others named in the deed.

Int. 3d.

Answer. I, Andrew J. Barnes, retained and remained in possession of said property about (3) three years. I left the property in the year 1866, because I wanted to go to Texas.

Int. 4th.

Answer. By an agreement made by the parties named in deed I accounted to Benjamin B. Barnes for rents of said property, about one thousand dollars a year.

Int. 5th.

Answer. When I quit said property I put J. R. Wright in possession of said property, he to receive one-third of the proceeds of the mills.

165 Int. 6th.

Answer. I do not know as I was in Texas at that time.

Int. 7th.

Answer. There has been no accounting to me for rents since I left. As to the balance of the parties named in the deed, I do not know.

Int. 8th.

Answer. I understood that the tenant in possession was holding the lands for the parties named in said deed.

Int. 9th.

Answer. The deed was recorded on the 26th day of March, 1864, by Andrew J. Barnes.

Int. 10th.

Answer. When I moved to Texas I delivered the original deed to Eliza Adams, wife of J. D. Adams, he being authorized to act as agent by the parties concerned. Since that time I do not know who has had possession of it.

Int. 11th.

Answer. The reasons Benjamin B. Barnes made said deed to said property were, the property was accumulated during the life

166 of his first wife and myself and parties named in said deed were children by his first wife. The younger set of children by his last wife had other community property in which the parties named in said deed could not share.

Int. 12th.

Answer. On said property there was one flouring mill, one rice-mill, one set of wool-cards, and five different sets of tenants' houses, and about five hundred acres of land under fence and three hundred of that in a state of cultivation; the balance of the place was — about ten thousand dollars; the value of the annual rents was fifteen hundred dollars.

Int. 13th.

Answer. At the time Benjamin B. Barnes made the said deed he owned one thousand and twelve and a half acres of land in Crawford county, valued at ten thousand dollars; twenty negroes, valued at five hundred dollars a piece, and about two thousand dollars' worth of personal property.

Int. 14th.

Answer. I know he did not owe more than five hundred
167 dollars at that time, unless he owed Madison Jones at that time, which I do not know; but dates will show. I was fully acquainted with all his financial transactions.

Int. 15th.

Answer. I do not know the amount of his indebtedness to Madison Jones; I do not know the date it was given; consequently I do not know whether he owed Madison Jones at the time the deed was made or not; but when the debt was made it was for negroes.

Int. 16th.

Answer. After taking out the property conveyed in said deed the balance of property belonging to Benjamin B. Barnes, Sen'r, was sufficient to pay all his debts, the Madison Jones debt included, if it was owing at that time, & there would have been at least fifteen thousand dollars left above the amount required to settle his debts.

Int. 17th.

He answers. I know nothing further.

A. J. BARNES.

168 *Answers to Cross-Interrogatories.*

1st Cross-int.

Answer. The deed was delivered to W. G. Vinson and myself, the same day it was made, in the presence of all the subscribing witnesses. The deed was written at the house of Benjamin B. Barnes, Sen'r, in Crawford county, Georgia, on the twenty-firth day of September, 1863, and to the best of my recollection by Lawyer Carterhouse, of Knoxville, Crawford county, Georgia, and said deed was delivered to me and W. G. Vinson on the twenty-firth day of September, 1863, at the house of Benjamin B. Barnes, Sen'r, in Crawford county, Georgia, and prior to the making of the deed he had been in ill health but at the time the deed was written he was convalescent and able to attend to his business affairs.

2nd. Cross-int.

Answer. I was in possession of said property for six months prior to the time that said deed was made, under the agreement that the said deed would be made. There was no visible change, as I felt as great an interest in my brothers' and sisters' welfare as I had heretofore in my father's.

169 3rd Cross-int.

Answer. He did by my directions.

4th Cross-int.

Answer. When I left Georgia for Texas I left the deed with Eliza A. Adams, wife of J. D. Adams, of Macon county, Georgia, he having

been selected by the parties concerned to act as agent; consequently the control went out of my hands. None of the others named in the deed has had possession of said property but through me as their agent.

5th Cross-int.

Answer. W. G. Vinson and myself had possession of the deed from 1863 to 1866, and to the best of my recollection I did not say I did not know, in answer to the interrogatory. When I left Georgia I left the deed with Eliza A. Adams, but after that time I do not know in whose possession it was in. I have answered interrogatories touching the case of W. E. Collier *vs.* B. B. Barnes, of Georgia, before Phillip Allen and Wm. Poindexter, of Johnson county, Texas. It was not written by myself but by my direction, and the copy there- annexed was a true copy of the deed, to the best of my knowledge and belief.

170 6th Cross-int.

Answer. Yes, I did answer to the interrogatories as stated, as at that time I thought I had traded my part, but when I arrived in Texas the trade was never consum-ated. No; as I have never transferred my right to the land by the deed to any one.

7th Cross-int. He answers, W. Poindexter, the commissioner appointed to take my interrogatories, and S. C. Padelford, the law partner of W. Poindexter.

A. J. BARNES.

STATE OF TEXAS, *County of Johnson:*

I, Jno. B. Hudson, clerk of the district court in and for said county, do hereby certify that the foregoing answers of A. J. Barnes, the witness before named, were sworn to and subscribed before me by the said witness, and that S. C. Padelford and W. Poindexter were present at the taking of said depositions.

Given under my hand and seal of said court, at office in Cleburne, Texas, this 30th day of March, 1880.

[Seal District Court of Johnson Co., Texas.]

JNO. B. HUDSON,
Clerk of District Court, Johnson Co., Texas.

171 STATE OF TEXAS, *Johnson County:*

WILLIAM E. COLLIER, Assignee, *vs.* ELIZA ADAMS *et al.*

I, the undersigned commissioner, nominated by the att'ys in the above cause to take the answers of the witness Andrew J. Barnes to the accompanying interrogatories, do hereby certify that the said Andrew J. Barnes appeared before me and answered the said interrogatories in my presence, and that he subscribed the same in my presence and made affidavits to the same before Jno. B. Hudson, clerk of the district court of Johnson county, Texas.

In testimony whereof I hereto set my hand on this the 30th day of March, A. D. 1883.

[L. S.] W. POINDEXTER, [SEAL.]
Commissioner, &c.

172 *Interrogatories for Defendants.*

UNITED STATES OF AMERICA:

In the Fifth Circuit Court of the United States for the Southern District of Georgia. In Equity.

WILLIAM E. COLLIER, Assignee of Benj. B. Barnes, Bankrupt,
vs.
ELIZA A. ADAMS *et al.*

Interrogatories to be exhibited to John D. Adams, Remillison Adams, living near Montezuma, in Macon county, in said State; Green Vinson, Benjamin B. Barnes, Adin Barnes, Josiah Wright, all living near Fort Valley, in said southern district of Georgia, and material witnesses for the defendants.

It is intended to cause all the witnesses to meet at or near Fort Valley at a day & place to be named with notice to complainant's counsel for the execution of these interrogatories.

Int. 1st. Do you know the parties?

Int. 2nd. State what relation, if any, each of you are to the parties in this controversy.

173 Int. 3rd. What acquaintance did each of you have with Benjamin B. Barnes on the 5th September, 1863? What property did he have at that time other than the lands in controversy? Give a particular description of his lands, negroes, & personal property of every kind that — at that time and the value of said property. Whereabouts did he reside, & on what lands, and how far away from his residence did these lands lay, & what were these lands worth at that time? What debts did said B. B. Barnes owe at that time, & to whom?

Int. 4th. Was the said Barnes then solvent or insolvent?

Int. 5th. Whether or not would the property of the said Benjamin B. Barnes other [than] these lands in controversy in this suit have been sufficient to pay all the debts *of the said debts* of said Barnes? If insufficient, what would have been the deficiency? If more than sufficient, how much greater was the value of the property than the debts of the said B. B. Barnes?

174 Int. 6th. What family did the said B. B. Barnes have at the date of this deed to these lands—that is, did he have a wife, & was this a first or second wife, & how many children did he have, and how many did he have by the first wife, and what were their names?

Int. 7th. Look at the annexed deed & say when it was executed, and when delivered; who executed the deed, and to whom was it delivered, & when?

Int. 8th. Who has had said deed from the time of its execution & delivery to the present time? Who were witnesses to the deed, and where are those witnesses now? Who wrote the deed?

Int. 9th. What were the reasons that induced Benjamin B. Barnes to make and deliver this deed to his older children?

Int. 10th. Where do the persons now live to whom this deed was made?

Int. 11th. After this deed was made who took possession
175 of the lands named in this deed? If you — that Andrew J. Barnes took possession, state when he took possession and how long he remained in possession of said place, & when he left it, & why, & how he came to leave it, & where did he go from this place.

Int. 12th. When Andrew J. Barnes gave up the possession of these lands, to whom did he give such possession, and on what terms did he give the possession of said lands and improvements on it? What was the contract between them?

Int. 13th. If, in answer to the above or 12th interrogatory, any of the witnesses say that Andrew J. Barnes put Josiah Wright in possession, state the nature & terms of the contract between Wright & Barnes. What did Wright agree to give rent, & to whom did he pay such rent, & how much did he pay?

Int. 14th. When did Wright give up the possession of said lands and to whom, & why did he quit the place so soon? How long did he occupy said place?

176 Int. 15th. What improvements & property were on these lands, & by what name and how was the place known?

Int. 16th. To whom did said Wright turn over said lands & mills when he left, & for whom? How did said B. B. Barnes receive the possession of said lands & for whom did he hold them? How many & what years did he pay taxes on said lands as agent for others, & for what others did he give in & pay taxes as such agent? Did said Barnes ever account to any of said parties for rents of said lands & mills? If yea, how much did he pay over & account to them, and for what years?

Int. 17th. When did said B. B. Barnes cease to return said lands as agent, & why did he [do] so? If the lands were given in as his by other persons & not by him, state why they did so.

Int. 18th. Why did B. B. Barnes return these lands in this
177 petition & schedule in bankruptcy, & who induced him to do so, and for what reasons?

Int. 19th. What was the physical & mental condition of the said Benjamin B. Barnes when he went into bankruptcy? Who induced him to go into bankruptcy, & on & for what reasons was he persuaded into bankruptcy?

Int. 20th. What debts did Benjamin B. Barnes owe at the time he went into bankruptcy? What property did he possess and own in his own right at the date of said bankruptcy? What was its actual value at that time other than at forced sales? What was the value of the property set apart to him as homestead, &c., and what

would the property have brought at fair & reasonable prices—would the whole property have brought if not cut up by homestead?

Int. 21st. What was the rent of the lands & mills worth per year, say from 1869 to the present time? What was the rent worth for, say 1874, 1875, 1876, 1877, 1878, 1879, & for 1880?

178 Int. 22nd. What were the lands & mills worth in 1875 and what are they worth [now]? I mean, what is the value of the mills & land then & now, at a fair valuation?

Int. 23. State all that you & each of you know that will make in favor of the defendants.

LYON & GRESHAM,
Def'ts Sol'rs.

Acknowledgment of Service.

Due & legal service of these interrogatories acknowledged. Copy & all other & further service & notice waived. We consent that the answers may be taken without commission. I nominate N. E. Harris, Esq'r as a commissioner to execute the same, or in case of his inability to serve, we nominate John L. Hardeman as commissioner.

3 April, 1880.

SAMUEL HALL,
ANDREW SLOAN,
Compl't's Sol'rs.

179 *Original Deed.*

GEORGIA, *Crawford County:*

This indenture, made and entered into this the twenty-fifth day of September, in the year of our Lord eighteen hundred and sixty-three, between Benj. B. Barnes, of the county and State aforesaid, of the one part, and Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, of —— county, Texas, Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, Remillison Barnes, of the county and State aforesaid, of the other part, witnesseth:

That I, the said Benj. B. Barnes, have, for and in consideration of the sum of ten thousand dollars to me in hand paid at and before the sealing and delivering of these presents, the receipt whereof is hereby acknowledged, granted, bargained, sold, and conveyed and do by these presents grant, bargain, sell, and convey, unto them, the said Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, A. J. Barnes, Sarah Vinson, Martha Cowart, Eliza Adams, Remillison Barnes, a certain tract or parcel of land containing seven hundred eight and a half acres, be the same

180 more or less, known and distinguished as lots No. (197) one hundred and ninety-seven, part of said lot being in Crawford and part in Houston county; fifty acres of lot No. (196) one hundred and ninety-six, northeast corner of said lot, Mossy creek being the line; one hundred acres, the west half of lot No. (219) two hundred and nineteen; lot No. (220) two hundred and twenty; the south half of lot No. (221) two hundred and twenty-one; fifty acres, more

or less, of lot No. (231) two hundred and thirty-one, the branch being the southeast line, *lieing* in northwest corner of said lot, and five acres up and down the creek of lot No. (196) one hundred and ninety-six; also water privilege on No. (196) one hundred and ninety-six, said land *lieing* and being in the sixth district of Houston county, with the exception of the 50 acres of lot No. (196) and the northwest corner of lot No. (157), which are in the sixth district of Crawford county; to have and to hold said bargained premises unto the — Moses Barnes, John Barnes, Benj. Barnes, Patience Lightfoot, Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams,
181 & Remillison Barnes, their administrators, executors, heirs, & assigns, with all the rights, members, and appurtenances thereunto attached or in any manner belonging, to their only proper use, benefit, and behoof forever. And the said Benj. B. Barnes for himself, his administrators, executors, and assigns, will warrant and forever defend the right & title thereof against the claim of themselves or any other person or persons whatever.

In witness whereof the said Benj. B. Barnes hath hereunto set his hand and affixed his seal the day and year above written.

BENJ. B. BARNES. [L. S.]

Signed, sealed, and delivered in the presence of—
D. G. JOHN.
W. G. VINSON.
J. D. HARTLEY, *J.P.*

CLERK'S OFFICE SUPERIOR COURT,
CRAWFORD COUNTY, GEORGIA.

The within and foregoing deed recorded in the clerk's office superior court of said county, in Book "G," pages 667 and 668, on this 26 March, 1864.

JAMES I. RAY, *Clerk.*

GEORGIA, *Houston County:*

182 CLERK'S OFFICE, SUPERIOR COURT.

Recorded in Book "O," pages 47 & 48, 30 Sept., 1874.
Fee, $1.00.

D. H. CULLEN, *Clerk.*

Endorsement: In 5th circuit court United States for southern district of Georgia. In equity. William E. Collier, assignee, *vs.* Eliza A. Adams *et al.* Interrogatories for Vinson, Wright, Adams, Aden & Benj. B. Barnes. Original.

183 Cross-interrogatories for John D. Adams, Remillison Adams, William G. Vinson (named in direct interrogatories Green Vinson), Benjamin B. Barnes, Aden Barnes, and Josias R. Wright, (named in direct interrogatories Josiah Wright).

1st Cross-int. Is not John D. Adams son-in-law, Remillison Adams the daughter, and Aden Barnes, the son, of Benjamin B. Barnes?

2nd Cross-int. Each of the witnesses will state whether he knows of his own knowledge to whom Benj. B. Barnes was indebted on the 5th of September, 1863, or for a month before or after that date. They will give the name of each separate creditor, together with the amount due to each, and will state how each of them came to be informed of these facts.

3rd Cross-int. To all the witnesses: Were John D. Adams, Remillison Adams, Aden Barnes, or Josias R. Wright present when the deed (which is annexed to original interrogatories) purports to have been executed and delivered? If they were not, they are requested to say nothing about the execution & delivery of said deed which they may have heard from others.

184 4th Cross-int. To W. G. Vinson: Was not the deed annexed to said cross-interrogatories written by you; is it not in your handwriting? Was not Benj. B. Barnes sick at the time said deed was written? Did he not then apply to you to draw a will for him, and did you not advise him to make this deed instead of a will?

5th Cross-int. To W. G. Vinson: Was the deed signed by A. G. John, yourself, and J. A. Hartly, J. P., at the same time? Was it not signed at the house of B. B. Barnes? Can you say that the deed, after it was signed, was delivered to any one in your presence? Was it not handed to Benj. B. Barnes when it was signed? What was the consideration of this deed? Was it not intended as a provision for Benj. B. Barnes' older set of children—that is to say, his children by his first wife; and was any money or property paid B. B. Barnes by his children for this deed? Do you know who had the custody of the deed from its date up to the present time?

185 6th Cross-int. To Josias R. Wright & Wm. G. Vinson: Was not Andrew J. Barnes in possession of the land conveyed by said deed at the time of its execution? Did he not remain in possession of the same until his removal to Texas, in the winter of 1866? Was there any change in his possession of the premises before and after the execution of this deed? Was it not the same after the deed was executed as before? Were either of the other grantees in the deed ever in possession of the premises? Have not these lands been in the possession of Benj. B. Barnes since said deed was made up to his bankruptcy the same as they were before the making of the deed? Who received the rents, issues, and profits from the lands, and especially from the mill on them, during that time? If you say Benj. B. Barnes did, state how you know this fact.

7th Cross-int. To Josias R. Wright: Did you not go into possession of the mill and a portion of the lands when Andrew J. Barnes left for Texas; if so, how long did you remain there? Under what contract and arrangement did you take possession?

186 With whom was this contract made? To whom did you account for the income of the property during the time you had it in possession? If you say the contract was made with Andrew J. Barnes, state to whom you accounted for the income of the property and paid over the proceeds. Has not Benj. B. Barnes con-

trolled the mill and premises since Andrew J. Barnes left for Texas up to his bankruptcy?

8th Cross-int. To Wm. G. Vinson and Josias R. Wright: How far did each of you live from Benj. B. Barnes from the year 1863 up to his bankruptcy? Please name the persons who were in possession of the mill and premises after Josias R. Wright left and the dates of their respective occupancy.

9th Cross-int. To Wm. G. Vinson and Josias R. Wright: How often did each of you see and converse with B. B. Barnes in 1874? Was he crazy or of sound mind when you saw him? Whenever he talked foolishly was he not under the influence of liquor,
187 and when free from liquor did he not converse and act as had been usual with him? Was he not then, and has he not since been, capable of attending to his business?

10th Cross-int. To Aden H. Barnes: How old were you in September, 1863? Did you not prove an account in bankruptcy against the estate of Benj. B. Barnes, bankrupt, for services rendered upon his farms in Houston & Crawford counties before S. Wise Parker, register in bankruptcy, at Fort Valley, Georgia, on the 26 day of June, 1874, and in that proof of account do you not state that you attended to said B. B.'s business for the years 1871, 1872, and 18–3 at the same price of one hundred dollars a year; that for the part of the year ending June 1st, 1874, having more than ordinary trouble with said B. B.'s business, owing to his increased feebleness, and being at times unable to be understood, you charged one hundred dollars for your services, as during that time you had to repair the wasteway to the water-mill, compelling you to walk in the water? Now, did your father, Benjamin B. Barnes, have any other land or mills situated in Houston county than the lands
188 embraced in the deed attached to these interrogatories? Was not this the mill referred to in your said proof of claim, and were not these—the Houston lands—likewise referred to in said proof of claim?

11th Cross-int. To Aden Barnes: How long has Benj. B. Barnes, to your knowledge, exercised control over these lands and received the income therefrom—how long has he been in possession of the same?

12th Cross-int. Did not John D. Adams, his wife, Eliza Adams, [and] Remillison Adams know that B. B. Barnes had gone into bankruptcy, and had returned these lands. If so, state when they or any of them first knew these facts, and whether or not any objection was made to the same; and if so, when such objection was made.

13th Cross-int. To Benj. B. Barnes: Did you not go into bankruptcy with the express and avowed purpose of defeating James Madison Jones in the collection of his debt, and was not this
189 purpose made known to the defendants in this bill, or some of them, and did not they, or a portion of them, concur with you in that course and advise you to take the benefit of the bankrupt act?

14th Cross-int. To Benjamin B. Barnes: Did not L. S. Evans appear on your schedule in bankruptcy marked A 1 as a creditor to be paid in full for services rendered in attending to this mill, and was not his proof of claim made out and allowed with your knowledge, approbation, and consent?

15th Cross-int. To John D. Adams and Remillison Adams: Where did you, together with Eliza Adams, live from the year 1863 up to 1875? Where do each of you now reside? Where did B. B. Barnes reside during that time?

ANDREW SLOAN,
SAMUEL HALL,
Complainant's Sol'rs.

Complainant's solicitors object to the 4th and 5th direct interrogatories, because they are leading; to the ninth, because it is irrelevant; to the 14th, because it is irrelevant and illegal;
190 to the 15th, for a similar reason, and for the further reason it seeks hearsay testimony; to the 16th, because it seeks to give in evidence transactions between others than the parties to this suit, and is irrelevant; to the 17th and 18th, for the same reason, and also to a part of the 19th for a similar reason; to the 20th & 21st and 22nd, because wholly irrelevant and illegal.

April 2nd, 1880.

ANDREW SLOAN,
SAMUEL HALL,
Complainant's Sol'rs.

Depositions of John D. Adams, Remillison Adams, W. G. Vinson, & Benj. B. Barnes.

IN THE UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF GEORGIA, } *ss:*
In Fort Valley, in Houston County, Georgia, }

In U. S. Circuit Court, So. Dist. of Ga. In Equity.

WILLIAM E. COLLIER, Assignee of Benj. B. Barnes, Bankrupt,

vs.

ELIZA A. ADAMS *et al.*

By virtue of an agreement between counsel in the above-
191 stated cause, as appears from the original hereto attached, Mr. N. E. Harris & W. Dessan, named as commissioners by the counsel in said cause—W. Dessen named by counsel for defendants & N. E. Harris named by counsel for complainants—have caused to meet at Fort Valley, in said county of Houston, after notice to complainant's counsel, the following witnesses, to wit: John D. Adams, Remillison Adams, W. G. Vinson, [and] Benj. B.

Barnes, who, being duly sworn true answers to make to said interrogatories hereto, deposes & answers as follows, to wit:

To the 1st direct interrogatory John D. Adams, W. G. Vinson, & Benj. B. Barnes answer: They know the parties; Remillison Adams knows all the parties except William E. Collier, assignee.

To the 2nd direct interrogatory John D. Adams answers: No relation to Collier, assignee; am son-in-law of Benj. B. Barnes; am husband of Eliza A. Adams; the other def'ts are my brothers-in-law and sisters-in-law.

Remillison Adams answers: No relation to Collier, assignee; daughter of Benj. B. Barnes; sister of Eliza A. Adams; sister to the other defendants.

W. G. Vinson answers: Am no relation to any of the par-
192 ties, save that I am brother-in-law to Sarah Vinson, one of the def'ts.

Benj. B. Barnes answers: No relation to Collier; am the bankrupt and father of all the defendants.

To the 3rd direct interrogatory all the witnesses answer: That on Sept. 5, 1863, they were all acquainted with Benj. B. Barnes.

Benj. B. Barnes answers: At that time I had about 1,200 acres of land besides the land in controversy, which is the mill property; not quite $\frac{1}{2}$, say $\frac{1}{3}$, of it under cultivation; about 30 likely negroes of my own, and six or seven negroes belonging to my wife, about 12 head of cattle and about 12 horses & mules, plantation tools, & some little house furniture, and a very few small notes and accounts. All of this property was worth about 20,000 dollars. I resided in Crawford, sixth dist., lot 155. These lands lay not quite two miles from where I lived; some of the land was in Houston and some in Crawford counties. These lands were worth, I reckon, about 10 dollars an acre. I owed Madison Jones the biggest part of my debts;

I owed my daughter, Sarah Vinson, about 400 dollars; I
193 reckon I owed Madison Jones a little over 3,000 dollars, and that is all I now remember to have owed.

John D. Adams answers: The property B. B. Barnes has mentioned is the property I know he had at that time. I would have given him 30,000 dollars for his property at that time. I think it would have paid me to have done so. The land would average from 10 to 12 dollars an acre. I know nothing of his debts of my own knowledge, except the Madison Jones debt, which was between 3 & 4,000 dollars.

Remillison Adams answers: I was acquainted with B. B. Barnes' property, which was the same he has described. I do not know what it was worth. I do not know how much he owed. I knew he owed Mr. Madison Jones.

William G. Vinson answers: I knew B. B. Barnes' property at the time mentioned to be substantially as Barnes has described it. I did not mean the property by items, but the aggregate value of it was about 20,000 dollars, I think. The land was worth, I suppose, about 10 doll's per acre. I did not know of any debt but the Jones' debt; did not know how much that was.

To the 4th direct interrogatory all the witnesses answer: Said Benj. B. Barnes was then solvant.

194 To the 5th interrogatory all the witnesses answer: The property of said B. B. Barnes was sufficient at that time to pay all the debts of said Barnes as mentioned above.

Benj. Barnes answers: He could have paid all his debts and would have had 10,000 doll's left at that time.

John D. Adams answers: B. B. Barnes, after paying the debts mentioned, would have had left 16 or 18,000 doll's.

Remillison Adams & W. G. Vinson answer: That not knowing how much B. B. Barnes owed they cannot state how much he would have had left.

Vinson answers: Taking Barnes' estimate of his debts as above, his property would be worth, after paying his debts, some 12 or 15,000 doll's.

To the 6th direct interrogatory all the witnesses answer: On the 25th Sept., 1863, B. B. Barnes' family was as follows: Nine children living by his first wife, who was dead; 5 children by his second wife, then living. Moses, John, Sarah, Martha, Andrew, Benjamin, Remillison, Patience, Eliza A. are the names of his children by his first wife. Joseph, Lucinda, Eugenia, Aden, Annie, are the names of his children by his second wife. John Barnes died since,

195 Sept. 25, 1863.

To the 7th direct interrogatory B. B. Barnes answers: The annexed deed was executed the day as written in the deed, to the best of my recollection, and it was delivered about that time or a day or two afterwards. I executed the deed. I delivered the deed to my son Andrew a day or two after it was made.

John D. Adams & Remillison Adams answer: They knew nothing of their own knowledge of the execution or delivery of the deed.

W. G. Vinson answers: The deed was executed the day mentioned therein. I was one of the witnesses. I do not know that it was delivered at this time. My impression is that it was not delivered at that time. Mr. B. B. Barnes executed it. I could not say positively to whom it was delivered or when.

To the 8th direct interrogatory B. B. Barnes answers: I gave the deed to my son Andrew, and have never seen it since till now.

John D. Adams answers: I saw the deed between 4 & 6 months after it was executed in the hands of Andrew Barnes. In [the] latter part of 1866 he gave the deed to me, through my wife, and I

196 kept it until I gave it to my att'y, Judge Lyon, about 4 or 5 years ago.

Remillison Adams answers: I saw the deed a few days after Andrew got it; have never seen it since till now.

W. G. Vinson: I have not seen the deed since I witnessed it until now. The witnesses were W. G. Vinson, D. G. John, & J. D. Hartley, J. P. I think D. G. John is living in Jasper county. I wrote the deed. J. D. Hartly is living in 6th district, Crawford county.

John D. Adams & Remillison Adams know nothing further in answer to this 8th direct interrogatory.

B. B. Barnes: I cannot now say positively, but my recollection is that D. G. John, W. G. Vinson, & J. D. Hartley, J. P., witnessed the deed. I do not know where John is. Hartley, if he is alive, lives in 6th dist., Crawford county. Vinson lives in same dist. Mr. Vinson wrote the deed.

To the 9th direct int. all the witnesses answer: This deed was made and delivered for the reason that B. B. Barnes desired to make his oldest children equal in the distribution of his property with the younger set, these having some property through their mother, his second wife, in remainder.

197 B. B. Barnes answers this from his own knowledge.

John D. Adams answers from information derived from Andrew and the second wife of B. B. Barnes.

Remillison Adams answers from information derived from B. B. Barnes' second wife.

W. G. Vinson answers from information derived from B. B. Barnes at the time of the execution of the deed.

To the 10th direct int. all the witnesses answer: John Barnes is dead; Martha lives in Brunswick; Remillison & Eliza live in Macon county; the others are in Johnson county, Texas.

To the 11th direct int. B. B. Barnes, Remillison Adams, & W. G. Vinson answer: Andrew J. Barnes was living at the mill property before the deed was made, and continued in possession until he left for Texas, some time in the latter part of 1866. He went, witnesses suppose, to see if he couldn't do better.

John D. Adams answers: Is not certain that Andrew Barnes was in possession before the deed was made. He was in possession after the deed was made, & remained there until latter part of 1866, when he went to Texas. He said he went to Texas to visit a

198 new country.

To 12th direct int. all the witnesses answer: When Andrew Barnes gave up the possession of these lands he gave possession to Josiah Wright; they do not know the terms of the possession, nor do they know what contract, if any, was between them.

W. G. Vinson answers that he simply saw Josiah Wright in possession, & did not know who put him there.

John D. Adams answers: On the day Andrew Barnes left for Texas he told me that Josiah Wright was to keep correct accounts of the proceeds of the mill.

To the 13th direct int. all the witnesses answer: They know nothing of the matters inquired of in this 13th direct interrogatory.

To the 14th direct int. all the witnesses answer: They recollect nothing of the matters inquired of in this 14th direct interrogatory.

To the 15th direct int. all the witnesses answer: There were in this mill property a mill-house & appurtenances, some cleared land, and some tenement-houses.

All except W. G. Vinson state that there was a carding-machine in the mill-house. The place was known as Barnes' mill place

199 To the 16th direct Int. B. B. Barnes answers: I do not know to whom Wright turned over these lands nor when or for whom. I got possession of the place by paying taxes on it. I held the place for the parties named in the deed. I can't remember how many years I paid taxes on these lands as a father, giving the money to them, my elder sett of children, without any charge against them. I gave in for my son Aden & Sarah Vinson and paid these taxes, too. I accounted to Remillison Adams, to John D. Adams for his wife, to Martha, & all the rest for the rents of the land & mill. I can't remember how much I paid over to them nor for what years. I paid them along as I could get it; I did not pay them much. I spent a good deal of money out of the proceeds of the mill keeping it in repair.

John D. Adams answers: Don't know to whom Wright turned over said lands & mill nor for whom; know that Wm. Thomas was the next miller; don't know how B. B. Barnes recovered possession of these lands; he held them for the grantees in the deed; he paid taxes on these lands probably as far back as 1870—probably further—

200 & for several years; don't know that he paid taxes for any other. He accounted to me, for my wife, for rent of said lands & mills, & he paid me rent for Remillison Adams & Martha Cowart. I do not recollect the amounts; I think they were small. I think one payment was for 1869 or 1870, and about a year or a year and a half after that he paid the other.

Remillison Adams answers: Don't know to whom Wright turned over these lands nor for whom. I do not know how B. B. Barnes got possession of these lands; don't know anything about his paying taxes. He sent me 150 dollars for my share of mill rent in 1870. This was all I got from him. He said it was the mill money. I suppose it was the rent.

W. G. Vinson answers: Know nothing of the matter inquired of in this interrogatory.

To the 17th direct int. B. B. Barnes answers: I never quite giving in the land as agent till Madison Jones had it levied on. I do not know when this was. I quit giving it in on account of this levy. If it was given in by any person, I don't know it.

John D. Adams, Remillison Adams, & W. G. Vinson know nothing of the matters inquired of in this interrogatory.

201 To the 18th direct int. B. B. Barnes answers: He returned the lands in his petition and schedule in bankruptcy because he was mislead by Joel R. Griffin, the register in bankruptcy, who told me I had to give everything in that I had ever given in for taxes, including cows, mules, & everything, but I don't know for what reason. Griffin told me to put the negro hire due to my wife in the schedule, and I believed anything Griffin said. My wife went with me to Griffin's.

The other witnesses know nothing of the matters inquired of in this int.

To the 19th direct int. witness B. B. Barnes answers: I was very poorly at this time; took 2 men to help me in & out of the carriage. Joel R. Griffin influenced me to go into bankruptcy. He was to

clear me of my debts & to get 500 dollars for it. I gave him my note for it.

J. D. Adams answers: Griffin told me he could clear Barnes of his debts for $500.

All the other witnesses answer: B. B. Barnes was in very feeble health, physically & mentally, when he went into bankruptcy. W. G. Vinson says Barnes had mind enough to transact business at this time. John D. Adams says Barnes did not have mind enough to tend to business at this time.

202 To the 20th direct int. B. B. Barnes answers: I owed Madison Jones and Sarah Vinson, & some small debts. I owned 1,200 acres of land, 12 mules, 12 cows & calves, and I think this was about all. The land was worth $10 per acre; mules, $100 a piece; cows & calves, $5 a piece. They told me the law allowed a homestead worth $3,000. The land in the homestead was worth about $1,500. The whole property would have brought $10 per acre had it not been cut up for the homestead.

J. D. Adams answers: Barnes owed Madison Jones. I know of no other debt. He had about 1,200 acres of land; 8 or 10 mules & horses; 20 or 25 head of cattle; household & kitchen furniture, & plantation implements. I think the limit value of this property was $10,000 to $12,000. I would hate to give $1,500 for the homestead. If not cut up by the homestead, the land would have brought $9,000.

W. G. Vinson answers: Barnes owed Jones & Sarah Vinson. He had a settlement of land said to be 1,200 acres & farm stock. The property was worth something like eight or ten thousand dollars. The value of the homestead was about $1,500. If not cut up by the homestead, the property was worth from 8 to 10 thousand

203 dollars. Being cut by the homestead, the land is depreciated about $2,500. These estimates are made for the years 1873 & 1874.

Remillison Adams answers: Barnes owed Jones' debt; don't know what property he had; don't know what it was worth; don't know the value of the homestead; don't know anything about the value of the property, with or without the homestead.

To the 21st direct int. B. B. Barnes answers: Six hundred dollars per annum.

J. D. Adams answers: From five to six hundred dollars per annum.

W. G. Vinson answers: The land was worth about 4 bales of cotton per annum; know nothing as to rental value of mills.

Remillison Adams knows nothing of rental value of the property.

To the 22d direct int. B. B. Barnes answers: The land and mill in 1875 were worth from 8 to 10 thousand dollars. The mill is not worth much now, land & mill worth now about $6,000.

J. D. Adams answers: Land & mill in 1875 worth $7,000. I doubt if the whole concern would bring over $5,000 now.

W. G. Vinson answers: Land & mill in 1875 worth 6 or $7,000; I suppose now they are worth 4 or $5,000.

204 Remillison Adams knows nothing of the value of the land & mills.

To the 23d direct int. all the witnesses: They know nothing further.

B. B. BARNES.
JOHN D. ADAMS.
W. G. VINSON.
REMILLISON ADAMS.

Answered, sworn to, and subscribed before us this 16th April, 1880.

WASHINGTON DESSEN, *Com'r.* [L. S.]
A. E. HARRIS, *Com'r.* [L. S.]

Depositions to Cross-Interrogatories.

To 1st cross-int: All the witnesses answer to the 1st cross-int., yes.

To 2nd cross-int. B. B. Barnes answers: On the 5th Sept. 1863, I owed Madison Jones between 3 & 4 thousand dollars. I owed Sarah Vinson about 400 dolls. and some small debts I do not remember; I know this of my own knowledge.

John D. Adams answers: I know of the Jones debt, about $4,000. I was present when the debt was contracted. I do not know of any other debt.

W. G. Vinson answers: Know of no debt but the Jones debt, and did not know how much that was.

205 Remillison Adams knows of no debt but the Jones debt, & do- not know how much that was.

To 3rd cross-int. all the witnesses answer: The parties named in this 3rd cross-int. were not present at the execution of the deed. Each witness here present speaks for himself. B. B. Barnes & W. G. Vinson answer that none of the parties mentioned in the 3rd cross [-int.] were present.

To the 4th cross-int. W. G. Vinson answers: The deed annexed to the interrogatories was written by me; it is in my handwriting; B. B. Barnes was sick when the deed was written; he did ask me to draw a will for him about the time this deed was executed, and I told him that if he wished to make the matter sure to his first set of children he had better make a deed. In consequence of this advice he made this deed.

To the 5th cross-int. W. G. Vinson answers: The deed was signed by D. G. John, J. D. Hartly, & myself at the same time. It was signed at the house of B. B. Barnes. I do not recollect that the deed was delivered to any one. I do not recollect to whom it was handed when it was signed. $10,000 *in* the consideration expressed in the deed; I do not know the actual consideration. It was in-

206 tended as a provission for B. B. Barnes' older set of children. No money or property was paid to B. B. Barnes by his children, that I know of. I do not know who had the custody of this deed from that time to this.

To the 6th cross-int. W. G. Vinson answers: A. J. Barnes was living at the mill on the land at the time of the execution of this deed. He was at the mill on the land until he went to Texas in 1866. There was no change, so far as I know, after the execution of

the deed. It was the same after the deed as before. None of the other grantees were ever in possession of the premises, so far as I know. B. B. Barnes, not very long after A. J. Barnes left for Texas, seemed to have a general superintendance of the premises, but in whose interest I don't know. I don't recollect how this was before the deed was made. I do not know who received the rents, issues, and profits from the lands or the mill during that time. I have seen the grain going from the plantation & mill to Mr. B. B. Barnes' house.

To the 8th cross-int. Wm. G. Vinson answers: I lived about a mile & a half from him from 1863 to bankruptcy of B. B.
207 Barnes. I cannot answer who was in possession of the mill & premises after Josiah Wright left, nor the dates of their occupancy. I do not know.

To 9th cross-int. Wm. G. Vinson answers: I do not remember how often I saw and conversed with B. B. Barnes in 1874. I saw him occasionally. I did not think he was crazy. I thought his mind was somewhat impaired by age. I cannot say that he ever talked foolishly when not under the influence of liquor. When free from liquor he acted & conversed with about as much mind as he had had for some years. At that time he seemed to be capable of attending to business; some part of the time since he has not been so.

To the 13th cross-int. B. B. Barnes answers: I did not go into bankruptcy for the purpose of defeating J. M. Jones in the collection of his debt; did not intend that he should lose it all. I did not tell the defendants. None of my children advised me to take the benefit of the bankrupt act. They did not know I intended to do it—I mean none of the older set.

To the 14th cross-int. B. B. Barnes answers; He does not
208 remember that L. S. Evens appeared in his schedule in bankruptcy as a creditor, in any capacity. He knows nothing of this. He does not remember about his proof of claim. Evens did some work for Collier, assignee, but not for me, whilst I was there.

To the 15th cross-int. John D. Adams answers: I & Eliza Adams lived in Macon county, Ga., from 1863 to 1875. We now live in the same place. B. B. Barnes during that time resided in Crawford county, in 6th dist., on the homestead. Remillison answers: I was living with my father, B. B. Barnes, up to 1864, when I married & went where I have been living ever since, in Macon Co., Ga. B. B. Barnes during that time resided in Crawford county.

B. B. BARNES.
JOHN D. ADAMS.
W. G. VINSON.
REMILLISON ADAMS.

Answered, sworn to, & subscribed before us this 16th April, 1880.
WASHINGTON DESSEN, *Com'r.* [L. S.]
N. E. HARRIS, *Com'r.* [L. S.]

209 *Depositions of Josias R. Wright.*

UNITED STATES OF AMERICA.
Georgia, Fort Valley, Houston County:

In Circuit Court, in the Southern District of Georgia. In Equity.

WILLIAM E. COLLIER, Assignee, *vs.* ELIZA A. ADAMS *et al.*

By virtue of an agreement between counsel, we have this day caused Josias R. Wright, one of the witnesses, to appear before us, and being duly sworn true answers to make to the interrogatories hereto attached, — deposes & answers as follows:

And afterwards, on this same day, at said place, in Fort Valley, Josiah R. Wright presented himself, & being duly sworn, deposeth & answereth as follows:

To 1st direct int. witness answers: I know the parties.

To 2nd direct int. witness answers: I am no relation to any of the parties.

To the 3rd direct int. witness answers: I have known B.
210 B. Barnes for the last 30 years. He had a good deal of land besides the mill property; I don't know how much it was; the most of this land was in Crawford. There were a good many negroes on the place, but didn't know to whom they belonged; don't know what am't of other property was; have no idea of the value of all this property. B. B. Barnes lived in the sixth dist. of Crawford. The other lands were around his residence. The average value of these lands was about 10 dollars per acre. I know nothing about the dates.

To the 4th direct int. witness answers: I suppose said Barnes was solvent then, because he had good credit & seemed to have a good property.

To the 5th direct int. witness answers: Know nothing about the matter inquired of in the 5th direct int.

To the 6th direct int. witness answers: Witness has heard read the answers of the other witnesses to this int. & adopts the same as his answer.

To the 7th direct int. witness answers: Know nothing of the matters inquired of in this interrogatory.

To the 8th direct int. witness answers: Know nothing of the matters inquired of in this interrogatory.

211 To the 9th direct int. witness answers: Know nothing of the matters inquired of in this interrogatory.

To the 10th direct int. witness answers: Witness has heard read the answer of the other witnesses to this interrogatory & adopts the same as his own.

To the 11th direct int. witness answers: Andrew Barnes was in the place tending the mill before the deed was made & continued there afterwards until latter part of 1866. He had been in the mill place once or twice before the date of this deed. He had left & had

come back again. A short time before Andrew Barnes left to go to Texas he told me that he was going away in order to get a settlement with his father. This was the reason he was going.

To the 12th direct int. witness answers: When Andrew J. Barnes went to Texas he employed me to go and take possession as miller; had no possession of the lands. I was to get one-third that the grist-mill made; one-half that the carding-machine made. This was all the contract between us.

To the 13th direct int. witness answers: I have just stated the nature & terms of the contract in the foregoing answer. I
212 know no one to the transactions but A. J. Barnes. I turned over the proceeds of the mill, after deducting my share, to Mr. B. B. Barnes. This was pursuant to the contract. With my share the proceeds of the mill were 400 or 500 bushels of corn & 3 or 4 hundred dollars' worth of wool for the carding-machine for the time I was there, from Dec., 1866, to Dec., 1867.

To the 14th direct int. witness answers: I gave up the possession in Dec., 1867, because I had been superseded by another man.

To the 15th direct int. witness answers: There was a mill-house, carding-machine, miller's house, one tenement-house, some cleared lands on this place, & two sets of mill-runners. The place was known as Barnes' mill.

To the 16th direct int. witness answers: Don't know that I can answer to whom I turned over the mill. Wm. Thomas succeeded me—moved in while I was moving out; don't know how B. B. Barnes got possession of the lands. The remaining part of this interrogatory witness answers he knows nothing.

To the 17th direct int. witness answers: Know nothing about matters inquired of in this int.

213 To the 18th direct int. witness answers: He knows nothing.

To the 19th direct int. witness answers: He knows nothing.

To the 20th direct int. witness answers: I don't know what debts or property (or the value of the same) are inquired of in this interrogatory.

To the 21st direct int. witness answers: If the mills had been kept in as good repair from 1869 up to this time as they were in 1869 they would have been worth about 500 dollars per year. The lands for rent were worth for this time about 3 bales of cotton per year. This for the cleared land.

To the 22nd direct int. witness answers: I suppose the lands & mills in 1875 were worth about $5,000. They are now not worth more than $2,000. I include in this only the mill lot containing about 700 acres.

J. R. WRIGHT.

Answered, sworn to, & subscribed before us this April 16th, 1880.

WASHINGTON DESSAN, *Com'r.* [L. S.]

N. E. HARRIS, *Com'r.* [L. S.]

214 *Depositions of J. R. Wright to Cross-Interrogatories.*

To the 1st cross-int. he answers: Yes.

To the 2nd cross-int. witness answers: He knows nothing.

To the 3rd cross-int. witness answers: He was not present when the deed referred to in this int. was executed.

To the 6th cross-int. he answers: A. J. Barnes was living at the mill on the mill place in Sept., 1863, and continued to live there until the winter of 1866. There was no change in his possession that I know of after the execution of the deed. If there was any I do not know it. None of the other children of Mr. Barnes were ever in possession of the mill place, as far as I know. I can't tell about the possession of B. B. Barnes since the making of the deed up to his bankruptcy. B. B. Barnes, while I was there, received the rents, issues, and profits. I paid them to him; know nothing about the land writs.

To the 7th cross-int. he answers: I took charge of the mills,
215 but not of the lands. When A. J. Barnes went to Texas I remained there one year. I took possession under following contract: I was to receive one-third of what the mill made and one-half of what the carding-machine made. This contract [was] made with A. J. Barnes. I turned over proceeds, after paying myself, to B. B. Barnes; don't know that B. B. Barnes control-ed the mill from time A. J. Barnes left for Texas to his bankruptcy; I suppose he did.

To the 8th cross-int. he answers: I lived about 4½ or 5 miles from B. B. Barnes during time inquired of. Wm. Thomas succeeded me as miller and stayed there two years. A man by the name of Amens came and stayed one year; Henry Estes came next and stayed one year; Josephus Vinson next, stayed one year; Lucies Evans followed him and stayed one year & part of another, at which time B. B. Barnes went into bankruptcy.

To the 9th cross-int. he answers: Saw B. B. Barnes at time men-
216 tioned frequently. His mind was as good as usual when I saw him: never heard him talk foolishly when he was not under influence of liquor; when free from liquor he acted and conversed as usual. He was then and has since, so far as I know, been capable of attending to his business.

J. B. WRIGHT.

Answered, subscribed, and sworn to before us this 16th day of April, 1880.

WASHINGTON DESSAN, *Com'r.* [L. S.]
N. E. HARRIS, *Com'r.* [L. S.]

Depositions of Aden H. Barnes.

IN THE UNITED STATES OF AMERICA, *Georgia, Bibb County:*

In U. S. Circuit Court, Southern District of Georgia. In Equity.

WILLIAM E. COLLIER, Assignee of Benj. B. Barnes, Bankrupt,

vs.

ELIZA A. ADAMS *et al.*

By virtue of an agreement between counsel in the above-stated cause, as appears from the original hereto attached, Mr. N. E. Harris & W. Dessan, named as commissioners by the counsel in said
217 cause, have caused Aden H. Barnes, one of the witnesses in said interrogatories mentioned, to come before us, at Macon, in said Bibb county, Ga., who, being duly sworn true answers to make to said interrogatories hereto attached, deposeth & answereth as follow-:

To 1st. direct int. witness answers: I know the parties.

To 2nd direct int. witness answers: I am no relation to Wm. E. Collier, assignee; Benj. B. Barnes is my father; Eliza A. Adams and the other def'ts are my half sisters & brothers.

To 3rd direct int. witness answers: On the 5th of Sept., 1863, I was about 16 years old, and of course knew my father. He had 11 or 12 hundred acres of land; 200 acres of this were in Terrell Co., Ga., & the rest in Crawford Co. As well as I remember, there were 18 or 20 negroes. He had 12 or 15 horses, some 30 head of cattle, 50 or 60 sheep, some 20 or 30 head of goats, about 100 head of hogs, farm tools & wagons & household & kitchen furniture. I was too young then to have any knowledge at that time of what this property was worth. He lived in Crawford Co., on lot 155, in 6th dist. of originally Houston, now Crawford, Co. These lands lay around
218 him except the Terrell Co. lot. I cannot say what these lands were worth at that time. I don't know what debts he owed then nor the amounts.

To the 4th direct int. witness answers: I do not know whether said B. B. Barnes was then solvent or insolvent.

To 5th direct int. witness answers: To the matters inquired of in this int. witness answers he knows nothing.

To 6th direct int. witness answers: On 25th Sept., 1863, B. B. Barnes' family was as follows: 9 children by his first wife, who was dead; 5 children by his second wife, who was then living; Moses, John, Sarah, Martha, Andrew, Benjamin, Remillison, Patience, Eliza A. are the names of his children by his first wife; Joseph, Lucinda; Eugenia, Aden, Annie are the names of his children by his second wife; John Barnes died since Sept. 25th, 1863.

To 7th direct int. witness answers: I look at the annexed deed & say I never saw it before, and know nothing of it of my own knowledge.

To 8th direct int. witness answers: To the matters inquired of in this 8th direct interrogatory witness answers that he knows nothing of his own knowledge.

219 To the 9th direct int. witness answers: I know nothing of the reasons, except what I have heard my father say since the war. My mother's father gave her some negro property that belonged to her & her heirs. My father then gave this mill property to his first set of children to make the children all equal in the estate.

To the 10th direct int. witness answers: John Barnes is dead; Martha lives in Brunswick, Ga.; Remillison & Eliza A. live in Macon Co., Ga.; the others are in Johnson Co., Texas.

To the 11th direct int. witness answers: I know nothing about the deed; I came home from the war in the latter part of 1865, nearly a year after it was over; Andrew Barnes was then living at the mill; I do not know how long he remained in possession; he left the mill place in the fall of 1866; I don't know why he left the mill place; he went to Texas.

To the 12th direct int. witness answers: Mr. Josias Wright moved into the house & took possession of the mill as miller when Andrew Barnes left; I do not know who took possession of the lands; my father's stock cultivated the lands after Andrew Barnes
220 left; I do not know anything of the terms of Wright's possession of the mill, nor the contracts between the parties.

To the 13th direct int. witness answers: To the matters inquired of in the 13th direct interrogatory witness answers he knows nothing.

To the 14th direct int. witness answers: I don't remember how long Wright stayed there; he gave possession to Billy Thomas; I don't know why Wright left.

To the 15th direct int. witness answers: There was a mill, a carding-machine, wool-picker, some tools, mill-house, & two settlements; this was known as the Barnes mill place.

To the 16th direct int. witness answers: Mr. Thomas moved there when Wright left; don't know for whom Thomas took the mill; I don't know how B. B. Barnes recovered possession of these lands, or for whom he held them; I have seen one tax receipt for taxes on this property paid by B. B. Barnes as agent for Moses Barnes & brothers; I have never seen any entries on the tax-books where he gave in this land as agent; further than this I know nothing;
221 I do not exactly remember the date of this tax receipt; the date of this receipt was before his bankruptcy; I saw it after his bankruptcy; I have seen some receipts for money & guano from my half brothers & sisters to my father, but what the money or guano was turned over to them for I don't know; further than this I know nothing.

To the 17th direct int. witness answers: To the matters inquired of in this interrogatory witness answers he knows nothing.

To the 18th direct int. witness answers: Col. Griffin told my father (I was present) that he would have to return this land in his schedule to show what disposition he had made of his property since Jones' debt was contracted, otherwise he told my father that he could not get his discharge.

To the 19th int. witness answers: B. B. Barnes when he went into bankruptcy was very feeble mentally & physically; Col. J. R. Grif-

fin induced him to go into bankruptcy; he was induced to go in bankruptcy on account of an old negro debt, & to get rid of that debt.

To 20th direct int. witness answers: Possibly he owed a
222 thousand dollars over and above the Madison Jones debt; he had 10 or 12 mules, farming utencils, 15 or 20 head of cattle, son.e number of hogs, and about 800 acres of land; I remember now he had bo[ugh]t some land, and had between 12 & 13 hundred acres of land. The actual value of this property was between 12 and 15 thousand dollars. I suppose the value of the homestead land & all was about $2,500. The homestead did not decrease the value of the remainder of the property; it just took off $2,500 from the entire value of the entire property.

To the 21st direct int. witness answers: For the last two or three years the mill has been worth nothing, as it is all gone down nearly. I suppose on an average the land & mill were worth from 1869 to about 1876 about 700 dollars rent per annum. The lands from 1876 to present time were worth about 250 dollars rent per annum.

To the 22nd direct int. witness answers: I suppose the land was worth $10 per acre in 1875. I don't know and cannot tell the value of the mill at that time. I suppose the land now may bring
223 $5 per acre. I don't know & cannot tell what the mill would bring now.

To the 23rd direct int. witness answers: I know nothing further.

ADEN H. BARNES.

Answered, sworn to, and subscribed before us this 20th day of April, 1880.

WASHINGTON DESSAN, *Com'r.* [L. S.]
NAT. E. HARRIS, *Com'r.* [L. S.]

Depositions to Cross-Interrogatories of Aden H. Barnes.

To 1st cross-int. witness answers: Yes.

To 2nd cross-int. witness answers: I know nothing of this and have answered nothing.

To 3d cross-int. witness answers: I was not present, and have already stated that I knew nothing of the deed.

To the 10th cross-int. witness answers: I was about 16 years old. I proved the account referred to in this int. for services on my father's farms, in Houston & Crawford counties, for the years past of 1869, 1870, 1871, 1872, 1873, & up to the time of his bankruptcy,
224 before S. Mie Parker—I suppose at the time stated in the interrogatory. To the balance of this int. witness answers: Yes; with these exceptions: 1st. He does not remember the year in which the extra charge was made for repairing the water-way or water-house of the mill; whatever time is stated in the proof of the claim is correct. 2d. My father, B. B. Barnes, had no other mills situated in Houston Co. other than the one mentioned in the deed & interrogatories. He had some other lands in Houston Co. other than those in the deed mentioned.

To the 11th cross-int. witness answers: As far back as I can remember B. B. Barnes exercised control over these lands & received the income from them; I suppose, as far back as 20 years ago, up to the time of his bankruptcy. He has been in possession—that is, he farmed and control-ed those lands—as far back as I can remember up to the time of his bankruptcy.

To the 12th cross-int. witness answers: I know nothing of the matters herein inquired of.

ADEN H. BARNES.

Answered, sworn to, & subscribed before us this 20th day of April, 1880.

WASHINGTON DESSAN, *Com'r.* [L. S.]
N. E. HARRIS, *Com'r.* [L. S.]

225 *Endorsements on Envelope Containing Foregoing Depositions.*

In equity. In circuit court of the United States for the southern district of Georgia. William E. Collier, assignee of B. B. Barnes, bankrupt, *versus* Eliza A. Adams *et al.* To Willard P. Ward, Esqr., clerk U. S. circuit court southern district of Georgia, Savannah, Ga. Received by mail April 22nd, 1880. W. P. Ward, clerk. Signed across 3 seals, N. E. Harris, com'r (L. S.), Washington Dessan, com'r (L. S.), Washington Dessan, com'r (L. S.), N. E. Harris, com'r (L. S.). Georgia, Bibb county. Received this package from the hands of Washington Dessan, one of the within commissioners, to be forwarded by due course of mail to Savannah, Ga. A. E. Derfert, ass't P. M., Savannah, Ga. Received April 22, 1880. H. Rowgnoh, for L. McLaws, P. M. Leave to open. 10 May, 1881. J. Erskine, judge.

226 *Interrogatories for John D. Adams & Eliza A. Adams.*

In the Fifth Circuit Court of the United States for the Middle Division of the Southern District of Georgia.

WILLIAM E. COLLIER, Assignee of B. B. Barnes, Bankrupt,

vs.

ELIZA ADAMS *et al.*

Interrogatories to be exhibited to John D. Adams and Eliza A. Adams, two of the defendants in the above cause, residing near Montezuma, in Macon county, in western division of the southern district of Georgia, material witnesses for the defendants.

Int. 1st. When & where did you, or either of you, first see the original deed from Benjamin B. Barnes, the bankrupt, to John Barnes, Moses Barnes, Eliza Adams, and others, for the land in dispute in this proceeding; from whom & did you receive this deed, and when and for what purpose?

Int. 2nd. Had the deed then been recorded or not; in
227 whose possession has said deed been since that time, and where and how was it kept? When you put this deed out of

your hands into whose hands did you place it and for what purpose? If any notice was served on you, or either of you, to produce said deed, who gave such notice, and what did you do in response to such notice?

Int. 3rd. Who had said deed recorded in the county of Houston, & why?

Int. 4th. When did you or either of you first hear of any claim by the assignee that this was the property of the bankrupt, & when did you get this information & from whom, & what did you say in reply to such information? Was Collier, the assignee, present or his counsel present? If yea, which & what was said by said Collier or his counsel in respect to such claim?

Int. 5th. Who was the regester in bankruptcy at the time of this information and conversation? What did he say about it?

Int. 6th. What other deeds and muniments of title for this
228 mill land or lands in controversy have you in your possession? When & how did you get these deeds, & where have they been from the time you received them to the present time? Please attach all of said deeds, plats, & grants & other muniments of title that you so received & now hold for said lands to your answers to these interrogatories.

Int. 7th. State all you know that will make in favor of the defendants.

R. F. LYON,
Def'ts' Sol'r.

The within interrogatories were handed to me in time to have been executed under the order of the court for taking testimony in the case; all objection to the same on that score is therefore waived; due and legal service of the same is acknowledged, & copy & all other & further service & notice of the same is also waived. I likewise consent that the same be executed without commission, & nominate Fletcher T. Snead & William H. Fits, Esquiers, or either of them, to act as commissioners on behalf of complainant in executing the same 19 Nov., 1881.

SAMUEL HALL,
Compl't's Sol'r.

229 Endorsement: In 5th circuit court of the United States, western division of southern district of Georgia. In equity. W. E. Collier, assignee, *versus* Eliza Adams *et al.* Interrogatories for Eliza A. Adams & John D. Adams.

Depositions of Eliza A. Adams & John D. Adams.

STATE OF GEORGIA, *Macon County:*

By virtue of an agreement between counsel in the case of William E. Collier, assignee of B. B. Barnes, bankrupt, *vs.* Eliza Adams *et al.*, pending in the fifth circuit court of the United States for the middle division of the southern district of Georgia, the undersigned,

acting as commissioners, have caused John D. Adams and Eliza A. Adams, witnesses in said case, to come before us, who, being duly sworn true answers to make to the annexed interrogatories, depose and answer as follows:

To the 1st interrogatory they answer: In the fall of 1866
230 they first saw the deed. Eliza A. Adams answers that her brother, Andrew J. Barnes, gave her the deed at that time at his house in Houston county, Ga., to bring home, and that she brought it home and at that time showed it to her husband, Jno. D. Adams. John D. Adams says that at that time & at his own house was the first time he saw the deed. They both answer it was delivered, as they understood it, at the time as a muniment of title to the parties named in said deed to the property named therein.

To the 2nd int. John D. Adams answers that his remembrance is that it had been at that time recorded in the county of Crawford, but not in the county of Houston. Eliza A. Adams answers that she does not remember whether it had been recorded or not since that time. Both witnesses answer that the deed was in the possession, until Nov. 4th, 1875, of John D. Adams, at which time it was turned over to James M. Jones by John D. Adams, during which time it was kept by said John D. Adams at his house with his papers of value.

The deed was delivered to James M. Jones to be used by
231 him for some purpose in connection with the bankrupt proceedings in the United States court, the receipt for which, signed by J. M. Jones, is hereto attached, marked "A." Both answer that no notice was served on them, so far as they remember, to produce said deed.

To the 3rd int. they answer that John D. Adams carried said deed to Houston county and had it recorded as a muniment of title under instruction of counsel.

To the 4th int. witnesses both answer that they do not remember when they first heard of any claim by the assignee that this was the property of the bankrupt, or from whom they received this information, what they or either of them said at the time, or whether the assignee, Collier, or his counsel were present, or what was said by them, if present, in respect to said claim.

To the 6th int. witness answers that the attached platts & grants and deeds, to wit, platt & grant for lot No. 197 to George Macumber, dated July 12th, 1822; platt & grant to lot No. 220 to Glenn Caldwell, dated Nov. 21st, 1825, and deeds (1st), Sept. 3rd,
232 1825, deed from Hiram Powell to James Farless; (2nd) deed from Glenn Caldwell to Benjamin Blanton, dated Jan'y 10th, 1826; (3rd) deed from Anderson Barker to Davis G. Busbee, dated 21st Dec., 1836; (4th) deed from Abbergale Farless to Green Bozeman, dated Sept. 20th, 1837; (5th) deed from Davis G. Busbee to John H. Powell, dated Feb'y 27th, 1839; 6th, deed from John H. Powell to Joel E. Ruslim & Jas. M. Powell, dated July 25th, 1839; (6th) deed from Joel E. Ruslim & Jas. M. Powell to B. B. Barnes, dated Nov. 27th, 1840; (7th) deed from Jas. Baland, sheriff, to Benj. Barnes, dated Feb'y 4th, 1845; (8th) deed from James R. Coussey to

Benj. Barnes, dated Nov. 7th, 1846; (9th) deed from Jas. C. Davis to Isaac Loften, dated Nov. 4th, 1850; (10th) deed from Isaac Loften to Benj. Barnes, dated Nov. 4th, 1850; (11th) deed from Kenchen Masten to Benj. Barnes, dated Ap'l 25th, 1851, were delivered to witnesses, respectively, at the time and with the deed from Benjamin B. Barnes to John Barnes, Moses Barnes, Eliza Adams, & others above referred to, and have been in the possession of John D. Adams ever since.

Witnesses attach said platts & grants and said deeds to these their answers.

233 To the 7th int. they answer: They know nothing else that will make in favor of defendants.

JOHN D. ADAMS.
ELIZA ADAMS.

Answered, sworn to, & subscribed before us this 11th day of January, 1882, in the town of Montezuma, in the county of Macon and State of Georgia.

Answered, sworn to, & subscribed before us this 11th day Jan'y, 1882.

F. T. SNEAD, *Com'r.* [L. S.]
B. G. OZIER, *Com'r.* [L. S.]

Land Grant, Dated 12th July, 1822.

STATE OF GEORGIA:

By his Excellency John Clark, Governor and commander-in-chief of the army and navy of this State and of the militia thereof, to all to whom these presents shall come, Greeting:

Know ye that, in pursuance of an act of the General Assembly passed the 15th of May, 1821, for making distribution of the land lately acquired of the Creek Nation of Indians and forming the counties of Dooly, Houston, Monroe, Fayette, and Henry, in

234 this State, I have given and granted, and by these presents in the name and behalf of this State do give and grant, unto George Macumber (orphan, — 271st district, McIntosh county), heirs & assigns, forever, all that tract or lot of land, containing two hundred two and a half acres, situate, lying, and being in the sixth district of Houston county, in the said State; which said tract or lot of land is known and distinguished in the plan of said district by the number one hundred and ninety-seven, having such shape, form, and marks as appear by plat of the same hereunto annexed; to have and to hold the said tract or lot of land, together with all and singular the rights, members, and appurtenances thereof whatsoever, unto the said George Macumber, his heirs and assigns, to his and their proper use, benefit, and behoof, forever in fee-simple.

Given under my hand and the great seal of the State this twelfth day July, in the year of our Lord eighteen hundred and twenty-two, and of the forty-seventh year of American Independence.

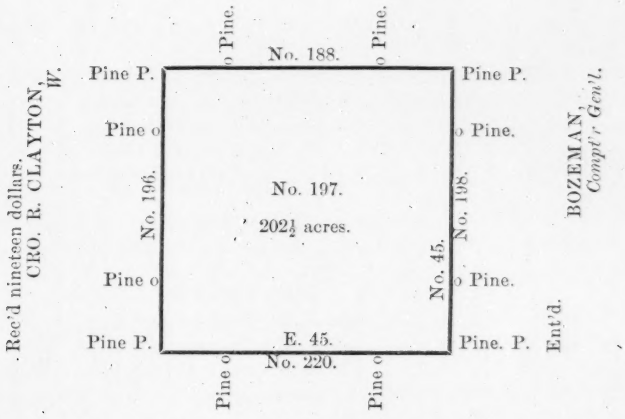
Signed by his excellency the Governor the 12th day of July, 1822.

JNO. BURCH, *S. E. D.*

235 Endorsement: Grant, George Macumber to lot 197, 6th district of Houston, dated 12th July, 1822. Georgia, secretary's office. Registered in book Houston, 6th district, page 15. A. Harmond, sec'y.

Plat of Lot of Land No. 197.

Magnetic variation, $\frac{5}{20}$ east.



Scale of 20 chains to an inch.

STATE OF GEORGIA:

The above plat is a representation of that tract or lot of land drawn by George Macumber, orphan, of the 271st district of McIntosh county, situate in the sixth district, in the county of
236 Houston, containing two hundred two and a half acres, which is known and distinguished in the plan of said district by the number 197. Surveyed on the 22nd day of April, 1821, by John L. Steward, surveyor.

[Seal State of Georgia, 1799.]

DANIEL STURGES, *S'r Gen'l.*

WM. BARGAINIER,
DAVID HUDSON, *C. C.*

Land Grant, Dated Nov'r 21*st*, 1825.

(First part of grant torn off and not among the papers.)

* * * * * * *

Heirs and assigns, forever, all that tract or lot of land, containing two hundred — and a half acres, situate, lying, and being in
237 the sixth district of Houston county, in the said State, which said tract or lot of land is known and distinguished in the plan of said district by the number two hundred and twenty, having such shape, form, and marks as appear by a plat of the same hereunto annexed; to have and to hold the said tract or lot of land, together with all and singular the rights, members, and appurte-

nances thereof whatsoever, unto the said Glenn Calwall, his heirs and assigns, to his or their proper use, benefit, and behoof, forever in fee-simple.

Given under my hand and the great seal of the State this twenty-first day of November, in the year of our Lord eighteen hundred and twenty-five, and of the fiftieth year of American Independence, *day of November, 1825.*

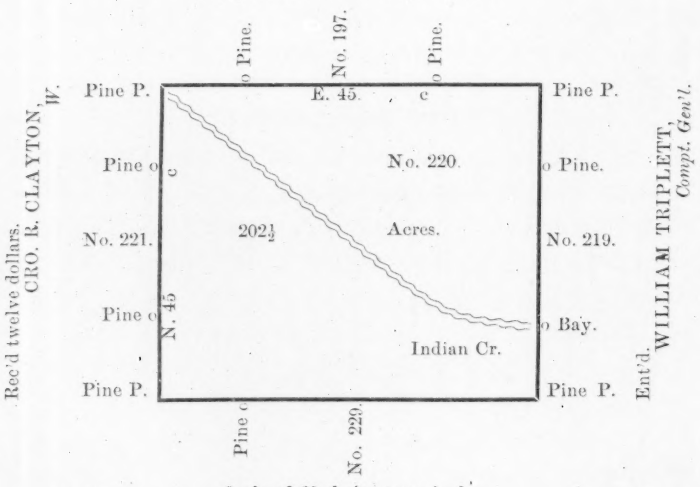
ELISHA WOOD, *S. E. D.*

(Date of month and part of signature torne off.)

238 Endorsement: Grant to Glenn Colwell for lot No. 220, 6th —, Houston, dated 21st November, 1825. Georgia, secretary's office. Registered in book Houston, 6th district, page 88. E. Hamilton, sec'y.

Plat for Lot No. 220.

Magnetic variation, 50½ east.



Scale of 20 chains to an inch.

STATE OF GEORGIA:

The above plat is a representation of that tract or lot of land drawn by Glenn Colwell, of Hollyclaws district, Oglethorpe county, situate in the sixth district, in the county of Houston, containing two hundred two and a half acres, which is known and distinguished in the plan of said district by the number 220. Surveyed on the 22nd day of August, 1821, by John L. Stewart, surveyor.

[Seal State of Georgia.]

THO. MITCHELL,
Surv. Gen.

WM. BERGAINIER,
DAVID HUDSON,
239 G. M. TROUP, *C. C.*

Deed from Rushing & Powell to Benjamin Barnes.

GEORGIA, *Houston County:*

This indenture, made this twentieth day of November, in the year of our Lord one thousand eight hundred and forty, between Joel E. Rushing & James M. Powell, of the county and State aforesaid, of the one part, and Benjamin Barnes, of the county of Crawford and State aforesaid, of the other part, witnesseth: That the said Rushing & Powell, for and in consideration of the sum of eight hundred dollars to them in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and conveyed, and does
240 by these presents grant, bargain, sell, and convey, unto the said Benjamin Barnes, his heirs and assigns, all that tract or parcel of land situate, lying, and being in the county and State aforesaid, known and distinguished in said plat by the No. 220, in the sixth district of Houston county; to have and to hold said tract or parcel of land unto him, the said Benjamin Barnes, his heirs and assigns, together with all and singular the rights, members, and appurtainances thereof to the same in any man-er belonging, to his and their own proper use, benefit, and behoof, forever in fee-simple; and the said Bushing and Powell, for themselves, their heirs, executors, administrators, the said bargained premises unto the said Benjamin Barnes, his heirs and assigns will warrant and forever defend the right and title thereof against themselves and against the claim of all other persons whatever.

In witness whereof the said Joel E. Rushing & James M. Powell hath hereunto set their hands and seals the day and year above written.

JOEL E. RUSHING. [L. S.]
JAMES M. POWELL. [L. S.]

In presents of—
ROBERT BAY.
HARDY BAY, *J. P.*

241 Endorsement: Rustring & Powell's deed to Barnes. Georgia, Houston county. Clerk's office, superior court. Recorded in Book H, folio 157, this Dec. 1st, 1840. James Holdirness, clerk.

Deed from James Coursey to Benjamin Barnes.

GEORGIA, *Crawford County:*

This indenture, made this seventh day of November, in the year of our Lord one thousand eight hundred and forty-six, between James Coursey, of the county of Campbell and State aforesaid, of the one part, and Benjamin Barnes, of the county of Crawford and State aforesaid, of the other part, witnesseth:

That the said James Coursey, for and in consideration of the sum of one hundred and twenty dollars, to him in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and con-

veyed, and by these presents doth grant, bargain, sell, and convey, unto the said Benjamin Barnes, his heirs and assigns, one-
242 half of a certain parcel of land, undivided, situate, lying, and being in the sixth district of formerly Houston, now Crawford, county, known by the northeast corner of lot number 196, containing thirty acres, be the same more or less, the lines to run thus: Beginning on the west side of the pond at high-water mark, and down the side of the pond to the mill-house; thence down the creek to the old pond, and from thence up the old road to the line, and from there unto the corner of said lot, and from there to the pond again: To have and to hold the one-half of the one-half of the grist-mill and the above-named premises, with all and singular the rights, member-, and appurtenances thereof to the same in any manner belonging, to his and their own proper use, benefit, and behoof forever in fee-simple; and the said James Coursey, for himself, his heirs, executors, and administrators,—the said bargained premises unto the said Benjamin Barnes, his heirs & assigns, [and] will warrant and forever defend the right and title thereof against themselves and against the claim of all other persons whatever.

In *writing* whereof the said James Coursey hath hereunto
243 set his hand [and] seal the day and [year] above written.

JAMES R. COURSEY. [L. S.]

Signed, sealed, & delivered in presence of—
W. R. JOYNER.
EBENEZER JOYNER, *J. P.*

Deed of Gift by Abigail Farless.

GEORGIA, *Houston County:*

This indenture, made the twentieth day of September, in the year of our Lord eighteen hundred & thirty-seven, between Abagail Farless, of the county and State aforesaid, of the one part, & Lereney Green Boyeman, of the same place, of the other part, witnesseth: That the said Abagail Farless, for and in consideration of *the* pure love & natural affection, the receipt whereof is hereby acknowledged, hath given, granted, & conveyed unto the said Lereney Green Boyeman, her heirs & assigns, all the property held by the said Abagail Farless, both real & perishable, to wit: One tract of land situate in the sixth district of Houston county, it being the west half of the number two hundred and nineteen; also fifty acres, more or less, of the northwest corner of the No. two hundred and thirty, together with all the property claimed by the said Abagail. The *the* said Abagail also gives Ugathany Hoges her lifetime in the same property, & after her death all of the said property to be for the benefit and use of said Lereney G. Boyeman, her heirs & assigns, forever.

her
244 ABAGAIL x FARLESS.
mark.

Signed & sealed the day [and] date above written —
WM. AVERA.
JAMES VINSON.
JAMES W. BATEMAN, *J. P.*

GEORGIA, *Houston County:*

Court of Ordinary, Jan'y Term, 1850.

Appeared in open court William Arera and James Vinson, [who] being duly sworn, say on oath that they are subscribing witnesses to the within will & testiment of Abagail Farless, & that they saw the said Abagail execute the same when she was in her sound mind, when she *done* so at the time it bears date, in their presence & in the presence of each other & the other witnesses *I* saw — W. Bateman, & all of free will & accord.

WM. AVERA.
JAMES VINSON.

Sworn to & subscribed in open court this Jan'y 19, 1850.
JAMES C. DUNCAN, *J. P. C.*

The within last will & testament of Abagail Farless having been duly proved in open court by the witnesses thereto, William Avera & James Vinson, as appears by the foregoing affidavit, it is ordered that the same will be admitted to record.

Endorsement: Recorded January, 1850. B. Batton, C. L. C.

Deed to B. Blanton.

STATE OF GEORGIA, *Oglethorpe County:*

This indenture, made this tenth day of January, in the year of our Lord eighteen hundred & twenty-six, between Glem Colwell, on the one part, & Benjamin Blanton, on the other part, both of
245 the county and State aforesaid, witnesses:

That the said Glenn Colwell, for and in consideration of the sum of one hundred dollars to him in hand paid by the said Blanton at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, soled, released, and confirmed, and by these presence doth grant, bargain, sell, release, and confirm, unto the said Blanton, his heirs and assigns, a certain tract or lot of [land] situate, lying, and being in the sixth district of Houston county known in the plans of said district [as] number two hundred and twenty, containing two hundred and two and a half acres, more or less, together with all and singular the rights, members, and appurtenances thereof whatsoever to the said tract or lot of land belonging or in anywise appertaining, to the only proper use, benefit, and behoof of the said Blanton, his heirs and assigns, forever, in fee-simple.

And the said Colwell and his heirs and assigns shall and will warrant and forever defend by these presents the lawful title
246 of said tract or lot of land, together with all the rights, members, &c., as aforesaid, and every part thereof, unto the said Blanton and his heirs and assigns against the said Colwell and his heirs and assigns and against every other person and persons whomsoever.

In witness whereof the said Colwell has hereunto set his hand and seal the day and year above written.

GLENN COLWELL. [L. S.]

Signed, sealed, & delivered in presence of—
THOMAS A. BOEWER.
JOHN C. TARPLY.
ROBERT JONES, *J. P.*

Endorsement: Glenn Colwell. Deed to B. Blanton. No. 220. 6th Houston. Clerk's office superior court, Houston county. Recorded in Book G, folio 67, February 3, 1837. Lewis I. Jordan, clerk.

247 *Deed from John H. Powell.*

GEORGIA, *Crawford County:*

JULY 25TH, 1837.

This indenture, made between John H. Powell, of the State aforesaid and the county of Crawford, of the one part, and Joel E. Rushing & James M. Powell, of the county and State aforesaid, of the other part, witnesseth:

That he, the said John H. Powell, for and in consideration of the sum of five hundred and fifty dollars to him in hand paid, the receipt whereof is hereby acknowledged, hath bargained, sold, and conveyed unto Joel E. Rushing & James N. Powell, their heirs and assigns, one lot of land lying in the sixth district of Houston county, known by number two hundred and twenty, containing two hundred two and one-half acres, according to plot and grant, together with all and singular the appertainances thereunto belonging, — to *him* the said Rushing & Powell, their heirs and assigns, forever, in fee-simple; and he, the said Powell, will forever defend the
248 aforesaid lot of land by these presents to them, the said Rushing & Powell, their heirs and assigns, from themselves, their heirs or assigns, and all other lawful claims whatsoever.

In testimony whereof I set my hand and affixed my seal the date above written.

J. H. POWELL. [L. S.]

Signed, sealed, & delivered in the presence of us—
JEFFERSON WHITTINGTON.
HARDY RAY, *J. P.*

Endorsement: Deed from John H. Powell to Rushing & Powell. Georgia, Houston county. Clerk's office superior court. Recorded in Book G, folio 731, Jan. 10th, 1840. Lewis J. Jordan, clerk.

Deed from Isaac Lofton.

GEORGIA, *Houston County:*

This indenture, made and entered into between Isaac Lofton and Benjamin Barnes, witnesseth:

That the said Isaac, for and in consideration of the sum of fifty dollars to him in hand paid, do grant, bargain, sell, and de-
249 liver, and hath granted, bargained, and sold, unto the said Benjamin Barnes, his heirs and assigns, all that tract or parcel of land, or one hundred and a quarter acres, more — of the south half of lot No. 221, two hundred and twenty-one, lying in the sixth district of said county: To have and to hold said tract or parcel of land unto him, the said Benjamin Barnes, his heirs and assigns, together with all and singular the rights, members, and appurtinances thereof to the same in any manner belonging, to his and their own proper use and benefit and behoof and fee-simple; and the said Isaac Lofton, for himself, his heirs, executors, & administrators, the said bargained premises unto the said Benjamin Barnes, his heirs and assigns, will warrant and forever defend the right and title thereof against himself and against the claim of all other person or persons.

In witness whereof the said Isaac Lofton hath hereunto set his hand and seal the day above written.

ISAAC LOFTON. [L. S.]

Signed, sealed, & delivered in the presence of—
Test: JOHN C. DAVIS.
JAMES SMITH.

250 GEORGIA, *Houston County:*

In person came James Smith before me, James E. Price, an acting justice of the peace for said county, and, after being duly sworn, deposeth and saith he saw Isaac Lofton sign, seal, and deliver the within deed for the purpose therein mentioned, and saw John C. Davis sign the same as a witness, and he done so likewise.

JAMES SMITH.

Sworn to before me this 4th November, 1850.

JAMES E. PRICE, *J. P.*

Endorsement: Deed from Isaac Lofton to Benjamin Barnes.

Deed from John C. Davis to Isaac Lofton.

GEORGIA, *Houston County:*

This indenture, made and entered into between John C. Davis and Isaac Lofton, witnesseth:

That the said John C. Davis, for and in consideration of the sum of one hundred and fifty dollars in hand paid, do grant, bargain,

sell, and deliver, and hath granted, bargained, and sold, unto
251 the said Isaac Lofton, his heirs and assigns, all that tract or parcel of land or one hundred and a half acres, more or less, of the south half of lot, No. 221 two hundred and twenty-one, lying in the sixth district of said county: To have and to hold said tract or parcel of land unto him, the said Isaac Lofton, his heirs and assigns, together with all and singular the rights, members, and appertenances thereof to the same in any manner belonging, to his and there own proper use and benefit and behoof and fee-simple; and the said John C. Davis, for himself, his heirs, executors, administrators, the said bargained premises unto the said Isaac Lofton, his heirs and assigns, will warrant and forever defend the right and title thereof against himself and against the claim of all other persons whatever.

In witness whereof the said John C. Davis hath hereunto set his hand and seal the day above written.

JOHN C. DAVIS. [L. S.]

Signed, sealed, & delivered in the presence of—
Test: BENJAMIN BARNES.
JAMES SMITH.

252 GEORGIA, *Houston County:*

In person came James Smith before me, James E. Price, an acting justice of the peace, in and for said county, and, after being duly sworn, deposeth and sayeth he saw John C. Davis sign, seal, and deliver the within deed for the purpose therein mentioned, and saw Benj. Barnes sign the same as witness, and he done the same likewise.

JAMES SMITH.

Sworn before me this the 4 November, 1850.

JAMES E. PRICE, *J. P.*

Endorsement: Deed from John C. Davis to Isaac Lofton.

Deed from James Beelard, Sheriff, to Benjamin Barnes.

STATE OF GEORGIA, *Crawford County:*

Whereas, in obedience to a writ of *fi-ra -cias* issued out of the inferior court of the county of Crawford, at the suit of Jesse L. Baker against Benjamin B. Bateman, I, James Beelard, sheriff of the county aforesaid, did lately seize the parcel or lot of land hereinafter described as the property of the said Benjamin B. Bateman,
253 and after being duly and publicly advertised, agreeable to law, did on the fourth day of Feb'ry, in year one thousand eight hundred and forty-five, at the place of public sales in said county of Crawford, expose the same to public outcry, when Benjamin Barnes, being the highest bidder, the same was knocked off to him at the price or sum of one hundred & twenty-five $\frac{56}{100}$ dollars:

Now, this indenture, made the fourth day of Feb'y, in the year of our Lord one thousand eight hundred and forty-five, and in the

sixty-ninth year of the Independence of the United States of America, between the said James Beeland, sheriff as aforesaid, of the one part, and the said Benjamin Barnes, of the other part, witnesseth: That the said James Beelard, sheriff as aforesaid, for and in consideration of the sum of one hundred and twenty-five $\frac{56}{100}$ dollars to him in hand paid by the said Benjamin Barnes at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, so far as the office of sheriff
254 authorizes me, unto the said Benjamin Barnes, his heirs and assigns, that parcel of land situated & being in the sixth district of originally Houston, now Crawford, county, known by the plan of said district *by* No. one hundred and ninety-six (196), it being one-half of the mills & the thirty acres thereunto attached, together with eighteen acres which B. B. Bateman's dwelling & farm is on, together with all other and singular the rights, members, and appurtenances unto the said premises of land being, belonging, or in anywise appertaining; and also all the estate, right, title, interest, property, claim, and demand of the said Benjamin B. Bateman, in law, equity, or otherwise, whatsoever, of, in, or to the same; to have and to hold the said parcel or lot of land and premises, and every part thereof, unto the said Benjamin Barnes, his heirs and assigns, to the only proper use, benefit, and behoof of the said Benjamin B. Bateman, his heirs and assigns, forever, in fee-simple, in as full an- ample a manner as the said Benjamin B. Bate-
255 man or his heirs and assigns did or might have held and enjoyed the same had it not been seized and sold under the execution aforesaid.

In witness whereof the said James Beeland hath hereunto set his hand and affixed his seal the day and year first above written.

JAMES BEELAND, *Sheriff.* [L. S.]

Signed, sealed, & delivered in the presence of—
J. B. HATOBER.
E. H. HICKS, *J. P.*

Endorsement: Deed from James Beeland, sheriff, to Benjamin Barnes.

Deed — Anderson Barker to Dennis G. Busby.

GEORGIA, *Houston County:*

This indenture, made this twenty-first day of December, in the year of our Lord eighteen hundred and thirty-six, between Anderson Barker, of the county & State aforesaid, of the one part, & Dennis G. Busby, of the same place, of the other part, witnesseth:

256 That the said Anderson Barker, for & in consideration of the sum of four hundred dollars to him in hand paid at & before the sealing & delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, & conveyed

& does by these presents grant, bargain, sell, & convey, unto the said Dennis G. Busby, his heirs & assigns, all that tract or parcel of land situate in the sixth district, Houston county, known and distinguished in the plan of said district by the number two hundred & twenty; to have & to hold said tract or parcel of land unto him, the said Dennis G. Busby, his heirs & assigns, together with all & singular the rights, members, & appurtenances thereof to the same in any manner belonging, to his & their own proper use, benefit, & behoof, forever, in fee-simple.

And the said Anderson Barker, for himself, his heirs, executors, & administrators, the said bargained premises unto the said Dennis G. Busby, his heirs & assigns, will warrant & forever defend the right & title thereto against themselves & against the claim of all other person or persons whatever.

257 In witness whereof the said Anderson Barker hath hereunto set his hand & seal the day & year above written.

his
ANDERSON x BARKER. [L. S.]
mark.

Signed, sealed, & delivered in presence of—

his
JOSIAH x VINSON.
mark.
WILLIAM AVERA, *J. P.*

Endorsement: Anderson Barker to Dennis G. Busby. Clerk's office, superior court, Houston county. Recorded in Book G, folio 68, February 3, 1837. Lewis J. Jordan, clerk.

Deed from D. G. Buzbee to John H. Powell, February 27th, 1839.

GEORGIA, *Crawford County:*

This indenture, made between Dennis G. Buzbee, of the State aforesaid and the county of Houston, of the one part, and John H. Powell, of the county and State aforesaid, of the other part, witnesseth: That he, the said Dennis G. Buzbee, for and in consideration of the sum of five hundred and fifty dollars to him in hand paid,

258 the receipt whereof is hereby acknowledged, hath bargained, sold, and conveyed unto John H. Powell, his heirs and assigns, one lot of land lying in the sixth district of Houston county, known by number two hundred and twenty, containing two hundred two and one-half acres according to plat and grant, together with all and singular the appurtenances thereunto belonging, to him, the said Powell, his heirs and assigns, forever, in fee-simple, and he, the said Buzbee, will forever defend the aforesaid lot of land by these presents to him, the said Powell, his heirs and assigns, from himself, his heirs or assigns, and all other lawful claims whatsoever.

In testimony whereof I set my hand and affixed my seal the date above written.

D. G. BUZBEE. [L. S.]

Signed, sealed, and delivered in the presence of us—
WM. ROBERTS.
BENJAMIN BARNES.

GEORGIA, *Crawford County:*

Personally came before me, William Roberts, who, being duly sworn, saith on oath that he saw D. G. Buzbee sign the within
259 deed, and that he signed the same as a witness. Benjamin Barnes sign- the same as witness this 24th August, 1839.
WM. ROBERTS.

HARDY RAY, *J. P.*

Endorsement: D. G. Buzbee. Deed to John A. Powell. Georgia, Houston county, clerk's office superior court. Recorded in Book G, folio 732. Jan. 10th, 1840. Lewis J. Jordan, clerk.

Deed from K. Martin to Benj. Barnes.

GEORGIA, *Crawford County:*

This indenture, made this twenty-fifth day of April, in the year of our Lord one thousand eight hundred fifty-one, between K. Martin, of the county and State aforesaid, of the one part, and Benjamin Barnes, of the same place, of the other part, witnesseth: That the said K. Martin, for and in consideration of the sum of twenty-five [dollars] to him in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby
260 acknowledged, hath granted, bargained, sold, and conveyed, and does by these presents grant, bargain, sell, and convey, unto the said B. Barnes, his heirs and assigns, all that tract or parcel of land situate, lying, and being in sixth district of Houston and Crawford counties, being part of lot No. 221 and part of 196, being four acres; to have and to hold said tract or parcel of land unto him, the said Benj. Barnes, his heirs and assigns, together with all and singular the rights, members, and appurtenances thereof to the same in any manner belonging, to his and their own proper use, benefit, and behoof, forever, in fee-simple; and the said K. Martin, for himself, his heirs, executors, and administrators, the said bargained premises unto the said B. Barnes, his heirs and assigns, will warrant and forever defend the right and title thereof against themselves and against the claim of all other persons whatever.

In witness whereof the said K. Martin hath hereunto set his hand and seal the day and year above written.

KINCHEN MARTIN. [L. S.]

Signed, sealed, & delivered in presence of—
WILLIS F. AVERA.
E. JOYNER, *J. P.*

Interlined before — signed.

261 *Hiram Powell. Deed to James Farlass.*

GEORGIA, *Houston County:*

This indenture, made this the third day of September, in the year of our Lord one thousand eight hundred and twenty-five, between Hiram Powell, of the State aforesaid and Crawford county, of the one part, and James Farless, of the State and county aforesaid, of the other part, witnesseth: That the said Hiram Powell, for and in consideration of one hundred and fifty dollars to him in hand paid, at and before sealing and delivery of these presents, the receipt — is hereby acknowledged, hath bargained, sold, and conveyed, and do- by these presents grant, bargain, sell, and convey, unto the said James Farless, his heirs and assigns, all that tract or parcel of land situated, lying, and being in the sixth district of Houston county, and known in a plan of said district by lot No. 219, and bound- west by lot No. 220; to have and to hold the said lot or parcel of land unto him,
the said James Farless, his heirs and assigns, together with
262 all and singular the rights, members, and appurtenances
thereof, to the same in any manner belonging, to his and their own proper use, benefit, and behoof, forever in fee-simple, and the said Hiram Powell, for himself, his heirs, executors, and administrators, the said bargained land and premises unto the said James Farless, his heirs and assigns, will warrant and forever defend the right and title thereof against themselves and against the claim of any other person whatever.

In witness whereof the said Hiram Powell hath hereunto set his hand and seal the date above written.

HIRAM POWELL. [L. S.]

Signed, sealed, & delivered in presence of—
JAMES W. BATEMAN.
BENJAMIN BATEMAN.

Sworn to before me by B. Bateman, this 16th October, 1826.
J. H. POWELL, *J. P.*

Endorsement: Hiram Powell. Deed to James Farless. Clerk's office superior court, Houston county. Recorded folio 127, in book 6, this 10 day November, 1826. Examined by Edw'd Welch, clerk.

263 *Endorsement on Envelope Containing Foregoing Depositions.*

William E Collier, assignee of B. B. Barnes, bankrupt, *versus* Eliza Adams *et al.* Post-marked Montezuma, Ga., Jan., 11th, 1882. To the clerk of the 5th circuit court, United States, for the middle division of the southern district of Georgia, Macon, Georgia. Received from F. T. Snead, one of the commissioners, to be forwarded by due course of mail. H. J. Hamilton, postmaster. Signed across seal: F. T. Snead, com'r. R. G. Ozier, com'r (L. S.). F. T. Snead, com'r (L. S.).

Petition of Assignee for Order for Sale of Bankrupt's Real Estate.

In the District Court of the United States for the Southern District of Georgia. In Bankruptcy.

In the Matter of B. B. BARNES, Bankrupt.

To his honor, John Erskin, judge of the district court of the United States for the southern district of Georgia:

The petition of William E. Collier, assignee of Benjamin B.
264 Barnes, bankrupt, respectfully showeth that said Benjamin Barnes, bankrupt, returned in schedule B 1 to his petition attached the following-described lands, to wit: Lot number one hundred and ninety-seven (197); fifty acres of lot number one hundred & ninety-six (196), from the northeast corner thereof, Mossy creek being the line; one hundred acres from the west half of lot number two hundred & nineteen (219); lot number two hundred & twenty (220); the south half of lot number two hundred & twenty-one (221); fifty acres, more or less, from the northwest corner of lot number two hundred & thirty-one (231), the branch being the southeast line; five acres up and down the creek of lot number one hundred and ninety-six (196); also the water privileges on lot of land number one hundred & ninety-six (196), containing in the aggregate seven hundred eight & a half acres, more or less, & all lying in the sixth district of Houston county, with the exception of the fifty acres from lot number one hundred and ninety-six & the northwest corner of lot number one hundred & ninety-seven, which are in the sixth district of Crawford county, all of which was conveyed to your petitioner by the deed made to him as assignee
265 as aforesaid, which went into his possession, & is still in his possession, under said deed of assignment. Your petitioner further shows that the title to said above-described lands is in dispute between him, as such assignee as aforesaid, & Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, Andrew J. Barnes, and Sarah Vinson, of the State of Texas; Martha Cowart, whose residence is unknown, but who resides in the State of Georgia; Eliza A. Adams, wife of John D. Adams, who resides in Macon county, State of Georgia; and Remillison Barnes, whose residence to your petitioner is unknown. Your petitioner also shows to your honor that the said Benjamin B. Barnes, bankrupt, returned in his Schedule B 1 to his said petition attached, *returned* lot of land number two hundred & thirty-five (235), in the eleventh (11th) district of Terrell county, which was likewise conveyed to your petitioner as such assignee, & which is claimed by him, but the title to which is in dispute between him & Lucinda Smith (formerly Barnes), wife of Daniel W. Smith, of the county of Dooly, State of Georgia. Your petitioner shows that the said Moses Barnes, John Barnes, Ben-
266 jamin Barnes, Patience Lightfoot, Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, & Remillison Barnes claim title to the said first-mentioned lands under a voluntary deed from the said Benjamin B. Barnes to them, dated the twenty-fifth

day of September, A. D. 1863, and that they are represented in their said claim by Richard F. Lyon, Esquire, of the city of Macon, an attorney of this court. He further shows that the said Lucinda Smith claims under a like voluntary deed made to her by the said Benjamin B. Barnes on the eighteenth day of May, A. D. 1871. Your petitioner further shows that said Benjamin B. Barnes had the continuous & uninterrupted possession of all of said lands from the respective dates of said deed until he was adjudged a bankrupt, using and controlling the same as his own, & enjoying the rents, issues, & profits thereof, & that the above-named feof-ees in both of said deeds are the children of said Benjamin B. Barnes. Your petitioner prays your honor to grant him an order for the sale of all of said lands, after advertising the same such a length of time, & upon such terms as to credit as may be prescribed in said
267 order as to holding the proceeds of such sale to answer any suit that may be instituted therefor by any of said claimants, and that your honor would be pleased to prescribe such notice to the said claimants, their agents or attorneys, as may be deemed reasonable, & as is in accordance with the provisions of section 5063 of the Revised Statutes of the United States. Your petitioner will ever pray, &c.

WILLIAM E. COLLIER,
Assignee of B. B. Barnes.

SAMUEL HALL &
WILLIAM A. LOFTON,
Of Macon, Ga., Petitioner's Att'ys.

UNITED STATES OF AMERICA, *Southern District of Georgia:*

At Fort Valley, Georgia, in said district, on this the 13th day of January, A. D. 1876, in person came William E. Collier, & being sworn maketh oath that the foregoing petition is true to the best of his knowledge, information, & belief.

WILLIAM E. COLLIER.

[Seal Joel R. Griffin, U. S. Co'er, Southern District Ga.]

JOEL R. GRIFFIN,
U. S. Commissioner.

268 Let notice be given in writing to each of the said claimants or their attorneys to appear before this court on the first day of the February session, to wit, 10 April, 1876, at 10 a. m., & show cause, if any they have, why the prayer of petition for the sale of said property ought not to be granted, &c. Notice to be served 20 days prior to said 10 April, 1876.

JOHN ERSKINE,
U. S. Judge.

JANUARY 17, 1876.

Filed in clerk's office this January 19, 1876.
JAS. McPHERSON, *Clerk.*

SCHEDULE B 1.—As approved.

In the Matter of BENJAMIN B. BARNES, Bankrupt.

Interest in Lands.

Statement of all real and personal estate and effects whatever which are now in the possession, enjoyment, or under the control of the petitioner, or which are held by any other person in trust for his use or, to the possession or enjoyment of which he is entitled at the date of filing petition.

Particular description of all real estate owned by petitioner, or held by him, and whether under contract or lease.	Encumbrances thereon, if any, and dates thereof.	Statement of all particulars relating thereto.	Estimated value.	
			Dollars.	Cents.
Place.—Lot of land, No. 155, containing 202½ acres, more or less, all cleared, and has dwelling and other improvements on it; lot of land, No. 154, containing 202½ acres, more or less, about half cleared; lot of land, No. 156, containing 202½ acres, more or less, all timbered with pine; lot of land, No. 134, containing 200 acres, mostly timbered, having 60 acres cleared; 100 acres of southern half lot of land, No. 133, and 50 acres of the southwest corner of lot of land, No. 135. The whole amounting to 957½ acres, more or less; all in the 6th district of Crawford Co., "Mill Place."	No encumbrance, except as set forth in Schedule A 3, by judgement lien of James M. Jones.	This land is like most of the uplands of Crawford Co., thin, and has been covered with pine. Since labor has left this and adjoining counties it is but little sought after for farming purposes. Land valued at $4.00 per acre.	3,828	00
Lot of land, No. 197, containing 202½ acres, more or less, sixty acres of which is cleared; lot of land, No. 220, containing 202½ acres, more or less, thirty timbered, 10 acres cleared; west half of lot 219, containing 100 acres, more or less, very poor; sixty acres off of the east half of lot 196, not timbered and uncultivated; 50 acres off of west side of No. 23, uncultivated, scrubby oak.	None but as above set forth and as explained further on in duplicate sheet, Schedule B 1.	This land is further explained, is mostly covered with water, and is worn and washed about the mill pond.		

Schedule B 1.—Continued.

Particular description of all real estate owned by petitioner, or held by him, and whether under contract or lease.	Encumbrances thereon, if any, and dates thereof.	Statement of all particulars relating thereto.	Estimated value.	
			Dollars.	Cents.
270 *Lands of Mill Place cont'd.*—One hundred acres off of south half of lot of land No. 221, about 15 acres in cultivation, rest timbered with pine; lot of land, No. 228, containing 202½ acres, more or less, known as the Kelly lot, about 20 acres under cultivation, rest timbered with pine; five acres off of lot No. 196 and off of the south side—land is covered with water; containing in all 912½ acres, in 6th district of Georgia.	Only by lease of such judgment obtained years back, as set forth in Schedule A 3, by James M. Jones, of Macon, Ga., for the purchase money of slaves, as best can be remembered — purchase- in 1860.	This land as described on this sheet is the one on which is located a small grist-mill seat, and at one time was in good condition, but now run down; improvements rotten, land very poor, and necessarily covered with water. Land valued at $5.00 per acre.	4,562	50
"*Ledingham Place.*"—Lot of land, No. 194, containing 202½ acres, more or less, most of it open and poor, and then 150 acres in cultivation; one hundred acres off of lot of land No. 191; most of this is open, and 15 acres in cultivation. In the 6th district of Crawford Co. In all, 302½ acres.	This might be considered as above, having no encumbrances but as set forth above.	This land is very thin pine land, much of which labor will not live on, as it is so poor. Land valued at $4.00 per acre.	1,210	00
271 One town lot in city of Fort Valley, known as part of lot No. 19, it being 24 feet clear across the lot by broadside to Armory hall.	This lot is claimed by Mr. D. H. Houser, as in controversy, Mr. Houser being in possession.	This *latrif* of land is not in possession of petitioner, but has owned it some time.	1,000	00
5th. One lot of land, No. 235, containing 202½ acres; in the 11th district of Terrell county; all timbered.	None more than above ---- ----	This is a wire-grass piece of land; valued at —	510	00

A true copy.

B. B. BARNES, *Petitioner.*
JAS. McPHERSON, *Clerk.*

272 As approved.

SCHEDULE B 5 (Inventory).

In the Matter of BENJAMIN B. BARNES, Bankrupt.

A particular statement of the property as excepted from the operation of said act, by the provisions of the 14th section thereof, giving each item of property and its valuation; and if any portion of it is real estate, its location, description, and present use:

1 black mare mule, named Rhody, valued at	$40 00
1 black mare mule, named Fannie, valued at	40 00
1 sorrel mare mule, named Jane, valued at	40 00
Black horse mule, George	80 00
A black horse mule, named Bill	40 00
A sorrel horse mule, named Red Tape, valued at	30 00
A black bay mule, Scott	50 00
A sorrel horse mule, named Babe	50 00
Two 2-horse wagons, valued at	20 00
	$400 00

B. B. BARNES, *Petitioner.*

A true copy.

JAS. McPHERSON, *Clerk.*

273 As approved.

SCHEDULE B 5 (Inventory).

In the Matter of BENJAMIN B. BARNES, Bankrupt.

A particular statement of the property claimed as excepted from the operation of said act, by the provisions of the 14th section thereof, giving each item of property and its valuation; and if any portion of it is real estate, its location, description, and present use.

Currency valuation:

1st. Household & kitchen furniture, consisting of 2 beds, lot of bedding to suit, 6 chairs, 2 wardrobes, 2 tables, 1 washstand, 6 pieces ware, and set crockery ware, common	$50 00
2d. Clothing for himself & wife	30 00
100 lbs. bacon, valued at $10.00; poultry, $5.00	15 00
5 cows and 5 calves and 6 yearlings, valued at $5.00 each	80 00
1 yoke of oxen, with the cart, $50.00; 10 shoats of all sizes, $20.00	70 00
2 sows and 8 pigs (small), $14.00; 7 sets plowgear tools, 20	34 00
1 rockaway, 15 years old, much worn, valued at $25.00	25 00
1 mare mule, named Kitt, black color, aged 19 years, at	70 00
1 black horse mule, named Prince, 10 years old, valued at	80 00
1 gin, ten years old (much worn), with the belt, valued at	35 00
	$489 00

Claims the beneath not assignable under the constitution of Georgia, article VII, clause I, and statutes of Georgia of 1868, laying off and setting apart a homestead in realty of $200.00, and personalty of $1,000.00 in species:

1st. Lot of land, No. 155, containing 202½ acres, more or less, all cleared, and has the dwelling, improvements, and outhouses of homestead; lot of land, No. 154, containing 202½ acres, more or less, about half cleared, rest covered with pine timber; lot of land, No. 134, containing 183 acres of land, mostly timbered with pine. This whole body of land valued in gold at $3.40 per acre	$2,000 00
2d. 1 thrash- for about $13.75; one fan for chaffing corn, $4.25	18 00
1 buggy, apart (old iron), $4.25; 1 McCormick reaper, $42.50	46 75
1 set of blacksmith tools (in parts), 1 old corn-sheller, $5.00	5 00
1 stile (125 gal.), valued at $35.00; 1 carriage & harness, 42.50	77 50

B. B. BARNES, *Petitioner.*

A true copy.

JAS. McPHERSON, *Clerk.*

274 UNITED STATES OF AMERICA, *Southern District of Georgia,* } *ss:*

I, James McPherson, clerk of the district court of the United States for the southern district of Georgia, do hereby certify that there is no certificate of exempted property or a copy thereof on file or of record in my office.

In witness whereof witness my official signature and the seal of the said court this 14th day of January, A. D. 1876.

[Seal District Court of Georgia.]

JAS. McPHERSON, *Clerk.*

Assignment of Bankrupt's Effects.

SOUTHERN DISTRICT OF GEORGIA, *ss:*

In the District Court of the United States for the Southern District of Georgia. In Bankruptcy.

In the Matter of BENJAMIN B. BARNES, Bankrupt.

275 Know all men by these presents that William Eyzard Collier, Esqr., of Fort Valley, in the county of Houston, State of Georgia, and in said district, has been duly appointed assignee of the estate of Benjamin B. Barnes, of ——, in the county of Crawford and State of Georgia, who has been adjudged bankrupt by decree of this court.

Now I, S. Wise Parker, register in bankruptcy in said district, by virtue of the authority vested in me by the fourteenth section of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, do hereby convey and assign to the said William Eyzard Collier, assignee as aforesaid, all the estate, real & personal, of the said Benjamin B. Barnes, bankrupt, including all property of whatever kind of which he is possessed or in which he was interested or entitled to have on the second day of April, A. D. one thousand eight hundred and seventy-four, together with all his deeds, books, and papers relating thereto, saving and excepting such property as is exempted from the operation of this assignment by the provisions of said fourteenth section of said act; to have and to hold all
276 the foregoing premises to the said William Eyzard Collier and to his heirs forever; in trust, nevertheless, for the use and purposes and with the powers and subject to the conditions and limitations prescribed and set forth in said act.

In witness whereof, I, S. Wise Parker, the said register, have hereunto set my hand and caused the seal of said district court to be affixed this the first day of June, anno Domini one thousand eight hundred and seventy-four.

[L. S. of the Court.]

S. WISE PARKER,
Register in Bankruptcy.

A true copy.

JAS. McPHERSON, *Clerk.*

Endorsement: No. 1113. District court of the United States, southern district of Georgia. In bankruptcy. In the matter of Benjamin B. Barnes, Crawford county, Georgia, Fort Valley post office, bankrupt. Assignment of bankrupt's effects. Wm. E. Collier, assignee, Fort Valley, Georgia. Copy filed this 5th day of June, 1874. James McPherson, clerk of said district court, U. S.

277 *Memorandums on Outside of Pages.*

Made copy of B 1 & B 5, also of assignment to attach hereto before sending to the judge. Made certificate—that is, certificate of exempted property was ample in matter. Order of court for notice to show cause. Filed Jan. 19, 1876.

Made copy of petition & of order to show cause, with list of papers attached, with certificate & seal, & mailed to W. E. Collier, assignee, at Fort Valley, directing him to have notice served under the order, &c.

Mailed Jan'y 20, 1876.

Endorsement: No. 1113. United States district court, southern district of Georgia. In bankruptcy. In the matter of B. B. Barnes, bankrupt. (See back for proceedings, &c.) Petition of assignee for order for sale of bankrupt's real estate (to which titles are disputed)

under section 5063, Revised Statutes. (Order for claimants to show cause on April 10, 1876. Filed Jan'y 19, 1876.) Filed this 14th day of Jan'y, 1876.

JAS. McPHERSON, *Clk.*

278 *Answer of John D. Adams, Respondent.*

In the United States District Court for the Southern District of Georgia.

In the Matter of BENJAMIN B. BARNES, Bankrupt.

Petition by assignee for leave to sell certain lands alleged to be part of the assetts of the bankrupt & claimed by Moses Barnes, John & Benjamin Barnes, Patience Lightfoot, Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, & Remillison Barnes, now Remillison Adams.

And now comes John D. Adams, for his wife, Eliza A., & as attorney-in-fact for the other named parties, and for cause why said petition should not be granted by your honor, respectfully shows that it is true that the said Benjamin B. Barnes, now an adjudged bankrupt, did, on the 25th day of September, in the year eighteen hundred & sixty-three, make his deed to said persons for said described lands, a copy of which is hereto attached; that said deed was not fraudulent & void, but was made in good faith to the said nine (9) named
279 persons, all children of said Barnes, now bankrupt, but the same was but a small portion of what the said Barnes owned at the time. The said Barnes possessed, at the time he made this deed, of his own property, about fifty slaves, worth in good money, before the war, as much as forty thousand dollars, and a portion of whom was the consideration for which the principal, & if not the only, debt that Barnes then owed, was given or contracted, and besides these negroes he owned a settlement of land, besides the property named in this deed, of about (1,200) twelve hundred acres, of the then value of twelve thousand dollars, in good money, and which said Barnes continued to own up to his adjudication in bankruptcy; also other lands with which respondent is not familiar, and personal property of considerable value, so that the said Barnes was worth at the time he made this deed, in property other than what is contained in said deed, at least fifty thousand dollars, in good money, while his debts at the time did not exceed six thousand dollars, & he created no debt since of any amount, his whole debts at the
280 time of his adjudication in bankruptcy, other than the one before referred to for the purchase of slaves, amounting to only about (600) six hundred dollars. The said deed was not fraudulent, to hinder, delay, or defeat the collection of any debt due & owing by the said Barnes, but as a *bona fide* advancement to his said children, which he could well afford to do at the time out of the great bulk of his estate, having a superabundance out of which to pay all his debts then in existance or subsequently created, & to make simular advancement to his other children also, & said deed

was delivered to his said children & recorded in the clerk's office of [the] superior court [of] Crawford county, where a portion of the land lay, on the — day of ——, 1864, & again in Houston county, where the balance of the lands lay, in ——, 1874.

It is true that the said Benjamin B. Barnes was adjudged a bankrupt, as alleged in said petition, & on his own petition, but he was not a bankrupt at the time, not insolvent, & there was no occasion for his application for the benefit of said act of Congress; but the said Benjamin B. Barnes was then quite an old man,
281 in very feeble health & laboring under a temporary aberration of mind, & was carried before a United States commissioner, one Joel R. Griffin, & then induced by his wife, who is not the mother of the children of said bankrupt named in said deed, but of the younger set, to prepare & swear to his schedules, under the directions of said persons, without being really conscious of what he was doing, & it was then by the directions and conduct of these persons that the settlement of lands named in said deed was put into his said schedules as his property when it was not so in fact, nor is it now any part of the assets of the estate of said bankrupt; all of which these respondents except to show in the evidence of said bankrupt, who has now recovered from his said temporary aberration produced by physical injuries shortly before that time, & by other persons.

These respondents further show that after the execution of said deed as aforesaid the said Benjamin Barnes delivered the possession of said land & the improvements thereon into the actual possession of Andrew J. Barnes, one of the donees therein named, who
282 occupied & used the same under said deed for himself & his cotenants in common for several years & until he sold his other property & moved to Texas with his sister, Mrs. Vinson, in 1866, where the other named residents of Texas & donees in said deed had resided for a number of years previously; then we left the premises in the possession of one Joseph Wright to hold for him & the other donees, but who subsequently let Benjamin Barnes into the possession of said lands, to which all the said donees were willing or, rather, did not object, and he, the said Benjamin [Barnes], continued to hold & use said lands & property from that time up to the adjudication in bankruptcy not as his property, but as the property of said donees as named in said deed, always representing said lands not to be his but that of his aforesaid children, he keeping up the property, making all necessary repairs & improvements on the same, & giving in and paying the taxes thereon as the property of his said children, as donees in said deed, &, as he states, they consenting to his said holding & use & not intending to interfere with him in said use so long as he might live, although they had the perfect right to do so, the said donees all the time continuing
283 in *in* possession of said deed; but, now that the said Collier, assignee, has taken the possession of said property — is depriving their father of the benefit of these same, they insist that he shall account to them for all rents & profits derived from the use and occupation thereof since his appointment & appropriation thereof

instead of to said bankrupt's estate, as the same is their property & not that of the bankrupt, & they pray your honor to so direct, & they will now pray.

They also hereto exhibit copy of their title of authority to deed.

JOHN D. ADAMS.

RICHARD F. LYON,
Att'y for Respondents.

GEORGIA, *Bibb County:*

You, John D. Adams, do swear that the facts set forth & contained in this your foregoing answer for yourself and the other parties interested in the same is true so far as the same depends on your own knowledge, & so far as the same depends on the knowledge or information derived from others you believe them to be true.

284 JOHN D. ADAMS.

Sworn to and subscribed before us this 10th day of May, 1876.

[Seal Y. Mourne Oyden, Bibb County, Georgia.]

Y. MOURNE OYDEN,
Notary Public, Bibb County.

Copy of Deed from Benjamin B. Barnes.

GEORGIA, *Crawford County:*

This indenture, made and entered into the twenty-first day of Sept., in the year of our Lord eighteen hundred and sixty-three, between Benj. B. Barnes, of the county & State aforesaid, of the one part, and Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, of —county, Texas, Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, Remillison Barnes, of the county and State aforesaid, of the other part, witnesseth: That I, the said Benjamin B. Barnes, have, for and in consideration of the sum of ten thousand dollars to me in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, granted, bargained, sold, and conveyed, and
285 do by these presents grant, bargain, sell, and convey, unto them, the said Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, A. J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, Remillison Barnes, a certain tract or parcel of land containing seven hundred eight and a half acres, be the same more or less, known and distinguished as lot No. 197, one hundred and ninety-seven, part of said lot lieing in Crawford and part in Houston county; fifty acres of lot No. 196, one hundred and ninety-six; northeast corner of said lot—Mossy Creek, being the line—one hundred acres; the west half of lot No. 219, two hundred and nineteen; lot No. 220, two hundred and twenty; the south half of lot No. 221, two hundred and twenty-one; fifty acres, more or less, of lot No. 231, two thirty-one, the branch being the southeast line, lieing in the northwest corner of said lot, and five acres up and

down the creek of lot No. 196; one hundred & ninety-six; also water privilege on No. 196, one hundred and ninety-six, said land lieing and being in the sixth district of Houston county, with the exception of the 50 acres of lot No. 157, which are in the sixth district of Crawford county: To have
286 and to hold said bargained premises unto the said Moses Barnes, John Barnes, Benj. Barnes, Patience Lightfoot, Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, & Remillison Barnes, their administrators, executors, heirs, and assigns, with all the rights, members, appurtenances thereunto attached or in any manner belonging, to their only proper use, benefit, [and] behoof forever; and the said Benj. B. Barnes, for himself, his administrators, executors, & assigns, will warrant and forever defend the right and title thereof against the claim of themselves or any other person or persons whatever.

In witness whereof the said Benj. B. Barnes hath hereunto set his hand and affixed his seal the day and year above written.

BENJ. B. BARNES.

Written, signed, sealed, delivered in the presence of—
D. G. JOHN.
W. G. VINSON.
J. D. HARTLEY, *J. P.*

CLERK'S OFFICE,
SUPERIOR COURT, CRAWFORD CO.

The within and foregoing deed recorded in the clerk's office, superior court of said county, in Book G, pages 667 & 668, on this 26 March, 1864.

JAMES P. RAY, *Clerk.*

287 GEORGIA, HOUSTON COUNTY,
CLERK'S OFFICE, SUPERIOR COURT.

Recorded in Book O, pages 47 & 48, 30 Sept., 1874.

D. H. CULLER, *Clk.*

Endorsement: No. 1113. United States district court, southern district of Georgia. In bankruptcy. In the matter of B. B. Barnes, bankrupt. Petition of assignee for order for sale of lands under section 5063, Revised Statutes. Answer of John D. Adams, respondent. Filed May —, 1876. Jas. Mc——n, clc.

288 *Answer of D. W. Smith.*

In the District Court United States for the Southern District of Georgia. In Bankruptcy.

In the Matter of BENJAMIN B. BARNES, Bankrupt.

Petition of William E. Collier, assignee, for order to sell lands of bankrupt, to which titles are disputed under section 5063, Rev. Stat. Order *nisi* to show cause, &c.

In response to the order in the above case comes Daniel W. Smith, trustee of Lucinda Smith, formerly Lucinda Barnes, wife of respondent, — answering said petition, says—

1st. That it is true, as stated in said petition, that respondent claims title to lot of land No. 235, in the 11th district of Terrell county, in said state, by deed of conveyance from said bankrupt made and executed in consideration of the sum of five hundred dollars on the 18th day of May, 1871, which will more fully appear by reference to a copy of said deed hereto attached.

2nd. Your respondent says that it is not true that said
289 bankrupt exercised ownership and control over said land after making said conveyance & at the time the adjudication in bankruptcy, but on the contrary respondent exercised ownership of said land as legal owner and paid taxes upon the same since the making of said deed.

3rd. Your respondent further says that at the time of making said deed the said bankrupt was perfectly solvent, that he owned a sufficiency of property to have discharged every debt he owed, and left a surplus, and that at the time of being adjudicated a bankrupt the said Barnes was worth the sum of twenty thousand dollars or more, and that there was never any time from the making of said deed down to the adjudication in bankruptcy that the bankrupt was unable to have discharged all his debts in full without selling the land in question; and, further, that at the time the said Barnes filed the petition in bankruptcy he was in an imbecile condition mentally and physically, and had been for some time prior thereto; that he was not of sound mind; that he was enfeebled and bedridden to such an extent that he had
290 to be transported to the office of the solicitor in a carriage to sign the petition and schedules in this case referred to in the petition of assignee; that by various and many illegal, inequitable, and improper measures the said Barnes was influenced to file his petition in bankruptcy, though in such an imbecile condition, mentally and physically, at the time as *to* not to know what he was doing; in fact, was mentally & physically incapacitated from transacting any business whatever. Among some of the measures that were used upon him to influence him to become a bankrupt, was that he was advised if he would pursue that course he would never recover compensation for the slaves which had been emancipated, or that his wife would; and, further, that his wife was influenced to threaten him with instant desertion and abandonment if he did

become a bankrupt, and that she did threaten to abandon said bankrupt in his then enfeebled condition unless he would "go into bankruptcy," and other illegal and fraudulent artificiers were brought to bear to influence the said Barnes to become a bankrupt.

291 4th. Your respondent further states that he is informed & believes that one of the largest creditors of bankrupt, namely, James M. Jones, and who is the most active in preventing this matter for a sale of said land, has proved his claim against bankrupt or a judgment creditor of said bankrupt for a large sum, when the said Jones knew that he held no judgment of any legal validity against said bankrupt, but knew that said judgment was fully satisfied, for that on the 3rd day of July, 1872 (after the making of said deed to the lot of land in question), the said Jones took from the said Barnes two promissory notes, for the sum of two thousand dollars each, due on the 1st day of Jan'y and 1st Feb'y thereafter, in satisfaction of said judgment, the said Jones knowing that the said Barnes was perfectly solvent at the time; and respondent submits that if the judgment or debt of Jones was ever — incumbrance upon the land in question that the same was discharged by the voluntary act of Jones in taking the two notes aforesaid upon said Barnes at the time aforesaid, being long subsequent to the making of the deed to the land in question by said Barnes to respondent.

292 5th. Respondent further says that said Jones, on the 3rd day of July, 1872, by a contract in writing, executed in the presence of witnesses by said Jones, and delivered to said Barnes by said Jones, which contract is still in existence, did take the promissory notes of said Barnes, for the sum of two thousand dollars each, due at the times heretofore stated, in satisfaction of said judgment, and said Barnes made and delivered the notes to Jones; that in said contract, made & executed and delivered by said Jones to said Barnes, there was a stipulation that said Barnes could sell any of his property for the purpose of paying off said notes (not to pay off the judgment, for that was satisfied by the notes), and respondent submits that this transaction between the said Barnes and said Jones discharged the land in question from the debt of said Jones, and that said Jones cannot now prove said judgment, and thereby prejudice the rights of respondent.

6th. Respondent further says that his *cestuy que trust* was served with a copy of this petition in this case on 21st March, 1876, but that by reason of sickness in his family he has been providentially

293 hindered from preparing and filing this answer within the time required by the order of the court, and prays the court that the same may be filed and entered *nunc pro tunc*, and that he may not be prejudiced or injured by the delay so caused, and that the facts and statements contained in this answer may be inquired into by the court, and that the respondent may be permitted to verify the same.

And respondent, having fully answered, prays, &c.

THOS. P. LLOYD,
Sol'r for Resp't.

You, Daniel W. Smith, trustee for Lucinda Smith, do swear that the above answer is true to the best of your knowledge and belief, so help you God.

D. W. SMITH, *Trustee.*

Sworn to before me May 8, 1876.

[Seal Wm. Minor, Notary Public, Macon Co., Georgia.]

W. MINOR,
N. P., Montezuma, Ga.

294 *Copy of Deed.*

GEORGIA, *Crawford County:*

This indenture, made and entered into this eighteenth day of May, in the year of our Lord eighteen hundred and seventy-one, between B. B. Barnes, of the county and States aforesaid, of the one part, and D. W. Smith, trustee, for his wife, Lucinda Smith, of the county of Dooly and State aforesaid, of the other part, witnesseth: That I, the said B. B. Barnes, have, for and in consideration of the sum of five hundred dollars to me in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, *hath* granted, bargained, sold, and conveyed unto the said D. W. Smith, as trustee for Lucinda Smith, a certain tract or parcel of land known as lot (No. 235) two hundred and thirty-five, in the eleventh district of originally Lee now Terrell county, containing two hundred two and a half acres, be the same more or less; to have and to hold the said bargained premises, with all and singular the rights, members, appurtenances thereunto attached or in any manner belonging, unto the said D. W. Smith, as trustee for his wife, Lucinda Smith, and her children, for their own proper benefit and use; and I, the said B. B. Barnes, for myself, my executors, administrators, heirs, and assigns, will warrant and forever defend the right and title thereof against the claim of all other persons whatsoever to the said D. W. Smith, as trustee for Lucinda Smith, her lawful heirs, forever in fee-simple.

Seal Wm. Minor, notary public, Macon Co.

295

In witness whereof I, the said B. B. Barnes, have hereunto set my hand and affixed my seal the day and year above written.

(Signed) B. B. BARNES. [L. S.]

Signed, sealed, and delivered in presence of—
(Signed) W. G. VINSON.
E. AULTMAN, *J. P.*

Entry of Clerk Superior Court, Terrell Co.

GEORGIA, TERRELL COUNTY,
CLERK'S OFFICE, SUPERIOR COURT.

Recorded in Book E, page 562, 3rd Feb'ry, 1872.
(Signed) J. C. F. CLARK, *Clerk.*

296 Endorsement: No. 1113. United States district court, southern district Georgia. In bankruptcy. In the matter of B. B. Barnes, bankrupt. Petition of assignee for order of sale

of lands under section 5063, Revised Statutes. Answer of D. W. Smith, trustee for Lucinda Smith, claimant. Filed May 9, 1876. Jas. McPherson, clerk.

Order Allowing Assignee to Withdraw Petition to Sell Lands.

United States District Court for the Southern District of Georgia. In November Term, 1879.

In the Matter of BENJ. B. BARNES, Bankrupt.

Petition by Assignee to Sell Real Estate.

W. E. COLLIER, Assignee, *vs.* MOSES BARNES *et al.*

William E. Collier, the assignee of the said Benjamin B. Barnes, makes application to the court to withdraw his foregoing cause, without prejudice to either party or to any other proceedings he may be advised to institute touching the subject-matter of said petition, & it is accordingly so ordered.

J. ERSKINE,
U. S. Judge.

Endorsement: No. 1113. U. S. district court, southern dis-
297 trict of Georgia. *In re* B. B. Barnes, b'k'pt. Order allowing assignee to withdraw petition to sell land. Filed Nov. 29, 1879. W. M. Heyward, deputy clerk.

Interrogatory for William Thomas, James Taylor & James W. Hardison.

In the Matter of B. B. BARNES, Bankrupt.

In the District Court of the United States for the Southern District of Georgia. In Bankruptcy.

Petition by William E. Collier, assignee of said bankrupt, to sell 708½ acres of land situate in the 6th district of Houston & Crawford counties.

Interrogatories to be propounded to William Thomas & James Taylor, of Crawford county, Georgia, & James W. Hardison, of Houston county, Ga., who are material witnesses for the petitioner in the above-mentioned case.

1st Interrogatory. Do you know the lands specified in the copy deed hereto attached? How long have you known them? Who has possessed and controlled them since your acquaintance with them? If you answer that Benjamin B. Barnes has, state in what right or character he held them, whether as agent, tenant, or owner,
298 & give fully & particularly any facts you may know going to show that he was the owner of said lands & mills, & held himself out to the public in that character; state fully & particularly what property did Benjamin B. Barnes own in 1863 & subsequently; state the items of & by which it consisted, & the value of each at the different periods.

2nd Int. State fully & particularly what was Benjamin B. Barnes' capacity, mental & physical, to attend to his business from 1866 to the middle of the year 1874, & your opportunity & means of knowing. If at any time during this period he was mentally incapacitated, state the cause of that incapacity & how long it continued. State, if you know, what was Benjamin B. Barnes' inducement to into bankruptcy, what property he expected thereby to save to his family, & particularly what debt or obligation he wished to get rid of, & which of his family urged him to this step.

3rd Int'g. to William Thomas: Did you have any conversation with Andrew J. Barnes when he was about to leave Georgia for Texas as to his reason for leaving; if yea, when and where was it? Who was present? State fully & particularly what he said.

SAMUEL HALL,.
WILLIAM A. LOFTON,
Of Macon, Ga., Att'ys for Petitioner.

299 *Cross-Interrogatories.*

1st Cross-int'g. Was not Benjamin B. Barnes, on 25 day of September, 1863, and before that time, possessed of any other tract of land besides this on which he carried his main farming business? Where was that plantation? How many acres were in it? How much open and cultivated lands was there on it? What was this land worth in 1860, in 1861, in 1862, & 1863?

2nd Cross-int'g. What other lands did said B. B. Barnes own at this time, and what other real estate? Where situate? What was the value of all this other real estate in the years & times mentioned in the 1st cross-int.?

3rd Cross. How many negroes did B. B. Barnes own at the date of the attached copy deed, & how long had he owned them prior to that time—as nearly as you can state or within your knowledge? What were these negroes worth in the years at the times stated in 1st cross-interrogatory?

4th Cross-int. What other personal property did said Barnes possess or own at the date of said deed? What was said property worth at the dates stated in said 1st cross-interrogatory?

300 5th Cross-int. What debts did said Barnes owe at the date of said deed, within your knowledge?

6th Cross-int. What was the condition of said B. B. Barnes at the date of said deed as to solvency & ability to pay his debts?

7th cross-int. After the making said deed, how long did said B. B. Barnes continue & hold the balance of his property? Did he make any conveyances of the balance of his real & personal property, either real or pretended, before going into bankruptcy?

8th Cross-int. Did not Andrew J. Barnes live on or control the land & property mentioned in this deed after the making of it up to the time he left for Texas?

9th Cross-int. State all you know in favor of defendants.

R. F. LYON, *Def'ts' Att'y.*

Acknowledgment of Service.

Due & legal service of these interrogatories acknowledged & all other & further service & notice waived. It is consented that the answers be taken without commission, which is also waived. We nominate —— Edwards, att'y-at-law at Marshalville, to act as commissioner on part of defendants.

16 Dec'r, 1876.

R. F. LYON, *Def'ts Att'y.*

301 Endorsement: In the district court United States for the southern district of Georgia. In the matter of B. B. Barnes, bankrupt. Assignee's petition to sell 708½ acres of land in 6th district of Crawford & Houston counties. Interrogatories for James Taylor & Wm. Thomas, of Crawford Co., & James W. Hardison, of Houston Co.

Copy of Deed from Benjamin B. Barnes.

GEORGIA, *Crawford County:*

This indenture, made and entered into this the twenty-fifth day of Sept., in the year of our Lord eighteen hundred and sixty-three, between Benjamin B. Barnes, of the county and State aforesaid, of the one part, and Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, of —— county, Texas; Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, Remillison Barnes, of the county and State aforesaid, of the other part, witnesseth: That I, the said Benjamin B. Barnes, have, for and in consideration of the sum of ten thousand dollars to me in hand paid at and
302 before the sealing and delivery of these presence, the receipt whereof is hereby acknowledged, granted, bargained, sold, and conveyed, and do by these presence grant, bargain, sell, and convey, unto them, the said Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, A. J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, [and] Remillison Barnes, a certain tract or parcel of land containing seven hundred eight and a half acres, be the same more or less, known and distinguished as lots No. (197) one hundred and ninety-seven, part of said lot lieing in Crawford and part in Houston county; fifty acres of lot No. (196) one hundred and ninety-six, northeast corner of said lot, Mossy creek being the line; one hundred acres, the west half of lot No. 219, two hundred and nineteen; lot No. 220, two hundred and twenty; the south half of lot No. 221, two hundred and twenty-one; fifty acres, more or less, of lot 231, two — thirty-one, the branch being the southeast line, lieing in the northwest corner of said lot, and five acres up and down the creek of lot 196, one hundred and ninety-six; also water privileges on No. (196) one hundred and ninety-six, said land
303 lieing and being in the sixth district of Houston county, with the exception of the 50 acres of lot No. 196 and the northwest corner of lot No. 157, which are in the sixth district of Crawford county; to have and to hold said bargained premises unto the said Moses Barnes, John Barnes, Benj. Barnes, Patience Lightfoot, An-

drew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, & Remillison Barnes, their administrators, executors, heirs, & assigns, with all the rights, members, and appurtenances thereunto attached or in any manner belonging, to their only proper use, benefit, and behoof, forever; and the said Benjamin B. Barnes, for himself, his administrators, executors, and assigns, will warrant and forever defend the right and title thereof against the claim of themselves or any other person or persons whatever.

In witness whereof the said Benj. B. Barnes hath hereunto set his hand and affixed his seal the day and year above written.

(Signed) BENJ. B. BARNES. [L. S.]

Signed, sealed, and delivered in the presence of—
D. G. JOHN.
W. G. VINSON.
J. D. HARTLEY, *J. P.*

304 *Acknowledgment of Service.*

Due and legal service and notice acknowledged, and we consent that the interrogatories be executed without a commission, Edwards, att'y at law, Marshalville, to act as commissioner.

29 Dec'r, 1876.

R. F. LYON,
Def'ts' Att'y.

Endorsement: In district court United States for southern district of Georgia. In the matter of B. B. Barnes, bankrupt. Assignee's petition to sell 708½ acres of land in 6th district of Crawford and Houston counties. Interrogatories for James Taylor & Wm. Thomas, of Crawford county, and James W. Hardison, of Houston county.

Depositions of J. W. Hardison.

In the District Court of the United States for the Southern District of Georgia. In Bankruptcy.

In the Matter of B. B. BARNES, Bankrupt.

Petition by Wm E. Collier, assignee of said bankrupt, to sell 708½ acres of land in 6th district of Houston & Crawford counties.

Interrogatories, &c.

305 By virtue of an agreement of counsel in above cause waiving commission, we, the commissioners, have caused the witnesses in said interrogatories named, to wit, J. W. Hardison, James Taylor, & Wm. Thomas, to come before us, & having duly sworn true answers to make to the annexed interrogatories, said witnesses, answering, say as follows:

J. W. Hardison answers to the—

1st Int'y. I have known the lands specified for 25 or 30 years. Benj. B. Barnes has always possessed & controlled them since I

knew them till he went into bankruptcy. He owned them as his own property & got all the benefit of them till he went into bankruptcy. I know this from the fact that he gave them in for taxes as his own lands, & I have at least twice since the war paid his taxes on them as his own lands & took the tax-receipts to him in his own name. He called the lands his and had a saw-mill and wool factory on them, and these he had repaired and paid for himself and solicited custom for them as his property, and this up to the time he went into bankruptcy.

306 He also owned in 1863 & subsequently about 1,000 acres of land where he lived; also the mill tract above spoken of, 708½ acres; also a lot of land in Terrell county, Ga. He also owned about 25 or 30 negroes (five men, I think, and about five women, the rest children); also some stock & other personalty—the amount I do not know. In 1863 all his lands together would have aggregated 15,000.00 dollars, I think. In 1868 & 1869 they would have brought more, & in 1874 less; this valuation includes the mill property. I do not know the value of his negroes & other personalty.

2nd. To this he answers: He was perfectly able to attend to his business up to about the time he went into bankruptcy—as well, able, and capable as any man I know; but a little before going into bankruptcy he had been drinking peach brandy steadily, & its effect was to incapacitate him from properly attending to his business; I was with him often and saw this myself. His object in going into bankruptcy was to avoid paying the Madison Jones debt, & to save his property to his family. I don't know which of his family urged him to this course.

To cross-interrogatories:

1st. He answers: He was. It was about 1,000 acres, & on
307 this he mainly farmed; it is three miles from the mill place, & he now resides on part of it. About 300 acres of the tract were in cultivation or open. In 1860 & 1861 it was worth about 6.00 dollars per acre—in fact, it was worth about the same in 1860, '61, '62, & '63.

To 2nd cross-[int.] he answers: He also owned the mill place of 708½ acres referred to in my above answer to direct question. In the years named these lands, including the mill, were worth about 5.00 dollars per acre. I don't know when he bought the Terrell county lot. He owned it in 1874, I know.

To the 3rd cross-int. he answers: He owned then about 25 or 30 negroes, as already answered; had owned some of them many years, & some only a short time; I can't be more exact. I don't know what they were worth at any time, for I did not know all the negroes.

To the 4th cross-int. he answers: I don't know what other personal property he had, or what it was worth.

To the 5th cross-int. he answers: He owed at that time the Madison Jones debt, amounting to about $5,000.00, I think; also
308 some other debts, but what they were & their amounts I do not know.

To the 6th cross-int. he answers: I think he was solvent at that time & able to pay his debts.

To the 7th cross-int. he answers: After making the deed he continued to hold & enjoy that property described in the deed, as well as the balance, till he went into bankruptcy. I do not know of any other conveyance, real or pretended, made by him to the balance of his property before going into bankruptcy.

To the 8th cross-int. he answers: He staid on it as a hireling till he went to Texas; he got a part of the profits for his wages. I never knew of his controlling it; to the contrary, Benj. B. Barnes controlled & claimed it as his own after the deed.

To the 9th cross-int. he answers: Have stated all I know.

J. W. HARDISON.

Answered, sworn to, & subscribed before us January 4th, 1877.

J. A. EDWARDS, [L. S.]
Commissioner.
A. L. MILLER, [L. S.]
Commissioner.

309 *Depositions of William Thomas.*

To the 1st int. he answers: I know the lands described & have since 1845. Benj. B. Barnes possessed & controlled them till he went into bankruptcy; he held possession of them & used them after the deed to his children just as he had before; that is the way I understood it. He hired me & paid me to work at the mill in 1868 & 1869. I don't know what he owned in 1863.

To the 2nd int. he answers: I saw but little of him after 1869, when I left his employ. Up to that year he was as capable of managing his own business as a man could be. I know nothing of his incpacity nor what induced him to go into bankruptcy, or that any one of his family tried to get him to go into it, or what debts he wished to avoid.

To the 3rd int. he answers: Andrew J. Barnes told me that Benj. B. Barnes was largely indebted to him & he was going to Texas to bring the old man Benj. B. to a settlement; that took place
310 at the mill & a short time before he left for Texas; don't think any one else was present.

Answer to Cross-Interrogatories.

To the 1st he answers: He owned a large place at the time named, where he now lives, & his main farm was there; don't know how many acres — in it or how much open land there was; think it was worth seven or eight dollars per acre during those years.

To the 2nd int. he answers: I don't know that he owned any lands besides the mill place & home place; don't know the value of his whole real estate.

To the 3rd int. he answers: I don't know anything about his negroes.

To the 4th int. he answers: I know of nothing but his stock and farming implements; don't know their value.

To the 5th int. he answers: I don't know.

To the 6th int. he answers: He was considered solvent and punctual in paying his debts at that time, but I do not know what
311 he then owed.

To the 7th int. he answers: He held and used all his lands after the deed, both home & mill place, up to the time he went into bankruptcy. Andrew J. Barnes staid at the mill as miller for sometime during and after the war, but on what arrangement with his father I do not know. I do not know of any deeds being made by Benj. B. Barnes to the balance of his property before going into bankruptcy.

To the 8th int. he answers: Andrew J. Barnes staid at the mill & cultivated a part of the lands till he went to Texas, & I think it was after the deed was made. The old man, Benj. B., cultivated the larger portion of the mill-place land during the same years; Andrew J. was the miller during this time.

To the 9th int. he answers: I know nothing else.

WILLIAM THOMAS.

Answered, sworn to, & subscribed before us January 4th, 1877.

J. A. EDWARDS, [L. S.]
Commissioner.
A. L. MILLER, [L. S.]
Commissioner.

James Taylor answers as follows:

312 To the 1st direct int'g. he answers: I know the lands specified & have for 15 years; Benj. B. Barnes possessed & controlled them the greater part of that time as owner; he employed labor to repair the mills & also received the toll, & he called the lands his while he controlled them; Andrew J. Barnes ran the mill a part of this time, but in what capacity I do not know; I saw him there both before & after the war & a portion of the time during the war; he had no control of the lands while he was at the mill—at least not more than a small house patch; Benj. B. Barnes controlled the mills & lands when he went into bankruptcy & some years previously; I can't state as to his property, or its value, for I do not know.

To the 2nd int'g. he answers: I lived there & still live within a mile of him & saw him often; at different intervals during this time he would get drunk, and when drunk was incapable of attending to his business, but when sober he was capable of attending to it. In 1872 & 1873 he drank more than at any other time &
313 his business was badly neglected; I do not think he was deranged or insane; he was in 1872 & 1873 a regular drinker, but was not down drunk except occasionally; I know this, for he bought the liquor at my store those two years. His capacity, mental & physical, from 1866 to middle of 1874, for attending to his business was very good for a man of his age. His object in going into bank-

ruptcy was to save his property & particularly to avoid paying the Madison Jones debt; don't know that any members of his family urged him into bankruptcy.

To the cross-interrogatories he answers:

To the 1st inte'g: He was; it was his main farm, about 950 acres; about 250 acres open. This is the house place; was worth about $6.00 per acre during those years.

To the 2nd inte'g: He owned the mill place; this was worth not more than 4.00 per acre, including the mills; know of no other lands he owned then.

314 To the 3rd int'g.: I do not know.

To the 4th int'g.: I don't know.

To the 5th int'g.: I do not know.

To the 6th int'g.: I think he was solvent at that time.

To the 7th int'g.: He controlled & used it up to the time he went into bankruptcy; I know of no conveyance made by him to the balance of his property.

To the 8th int'g.: I do not know; he lived at the mill, but what control he had over it or the lands I do not know; don't know when he went to the mill.

To the 9th int'g.: I know nothing more.

JAMES TAYLOR.

Sworn to, answered, & subscribed before us January 5th, 1877.

J. A. EDWARDS, [L. S.]
Commissioner.

A. L. MILLER, [L. S.]
Commissioner.

Endorsements on Envelopes Containing Foregoing Depositions.

In the district court of the United States for the southern
315 district of Georgia. Petition of W. E. Collier, assignee of said bankrupt, to sell land, &c. In the matter of B. B. Barnes, bankrupt. Interrogatories, &c. James McPherson, Esqr., clerk district court of U. S. for southern district of Georgia, Savannah, Georgia. Interrogatories and answers of James W. Hardison, William Thomas, & James Taylor. Signed across seal, J. A. Edwards, com'r (L. S.). A. L. Miller, com'r (L. S.). Received at Fort Valley, Ga., from A. L. Miller, commissioner, on the 5th day of January, A. D. 1877. James M. Jones. Received per hand of James M. Jones the 12th day of November, A. D. 1877. Willard F. Warner, deputy clerk. Leave to open. J. Erskine, judge. Nov. 10, 1877.

Interrogatories for John D. Adams, Wm. G. Vinson, & Josias Wright.

In the United States District Court for the Southern District of Georgia.

In the Matter of BENJAMIN B. BARNES, Bankrupt.

Petition of James M. Jones, creditor, & the assignee of said Barnes, to subject 708½ acres of land in the sixth district of Houston and Crawford counties.

Interrogatories to be exhibited to John D. Adams, residing
316 near Montezuma, Wm. G. Vincent, and Josias Wright, residing near Fort Valley, Georgia, and material witnesses for the claimants to the land in controversy, as against the claims of creditors and assignee.

Interrogatory 1st. Look at the annexed copy deed and state what you know of the execution of the original deed, when it was made, and what was the consideration and inducement to the making of said deed.

Interrogatory 2nd. What relation are Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza Adams, Remillison Barnes, the grantee- named in said deed, to Benjamin B. Barnes, the maker thereof?

Interrogatory 3rd. After the deed was made who took possession of said land? Under what right was such possession taken? Under whom and for whom did such person take and hold the possession of said lands and property described in said deed? If you say in your answer to the foregoing that you took the possession of the same, describe the improvements on the said lands, how long
317 you held them, what did you do with the income arising or received by you from said property, if any, and what was that income.

Interrogatory 4th. How long did you hold said property? Why did you give it up or quit the possession? To whom did you deliver the possession and for whom was such person to hold the possession? What account was he to keep of rents, and to whom was he to render such account?

Interrogatory 5th. If the possession of said property ever went back into the possession or for the use of Benjamin B. Barnes, who made this deed, state by whose consent it was done, and why.

Interrogatory 6th. State whether it was by common consent of all the donees in the said deed to let old man Barnes have a life use in it or the benefit of it for life, or not, or why it was.

Interrogatory 7th. Where do the grantees in said deed now live? What property did Benjamin B. Barnes, the maker of the deed, have at the date of the deed, whether of lands, negroes, or other things? Describe the same fully and particularly, giving
318 value, and state your means of knowing.

Interrogatory 8th. What did Benjamin B. Barnes owe at the date of the deed, and what was your means of proving this?

Interrogatory 9th. State all you know that will make in favor of the *bona fides* of the deed.

R. F. LYONS,
Att'y for Claimants of the Land
Under Deed of 25th Sept., 1863.

319 *Copy of Deed from Benjamin B. Barnes.*

GEORGIA, *Crawford County:*

This indenture, made and entered into this twenty-fifth day of Sept. in the year of our Lord eighteen hundred and sixty-three, between Benjamin B. Barnes, of the county and State aforesaid, of the one part, and Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, of —— county, Texas; Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, Remillison Barnes, of the county and State aforesaid, of the other part, witnesseth: That I, the said Benj. B. Barnes, have, for and in consideration of the sum of ten thousand dollars to me in hand paid at and before the sealing of these presents (the receipt whereof is hereby acknowledged), granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto them, the said Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, Remillison Barnes, a certain tract or parcel of land containing seven hundred eight and a half acres, be the same more or less, known and dis-
320 tinguished as lots No. 197 (one hundred and ninety-seven), part of said lot lying in Crawford and part in Houston county; fifty acres of lot No. 196 (one hundred and ninety-six); northeast corner of said lot, Moses creek being the line, one hundred acres; the west half of lot No. 219 (two hundred and nineteen); lot No. 220 (two hundred and twenty); the south half of lot No. 221 (two hundred and twenty-one); fifty acres, more or less, of lot No. 231 (two hundred and thirty-one), the tract being the southeast line, lying in the northwest corner of said lot, and five acres up and down the creek of lot No. 196 (one hundred and ninety-six); also water privilege on No. (196) one hundred and ninety-six; said land lying and being in the sixth district of Houston county, with the exception of the fifty acres of lot No. 196 and the northwest corner of lot No. 157, which are in the sixth district of Crawford county: To have and to hold the said bargained premises unto the said Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, Andrew J. Barnes, Sarah Vinton, Martha Cowart, Eliza A. Adams, & Remillison Barnes, their administrators, executors, heirs, and assigns, with all
321 the rights, members, and appurtenances thereunto attached or in any manner belonging, to their only proper use, benefit, and behoof forever; and the said Benjamin B. Barnes, for himself, his administrators, and assigns, will warrant and forever defend the title thereof against the claims of themselves or any person or persons whatever.

In witness the said Benjamin B. Barnes hath hereunto set his hand and seal the day and year above written.

——— ———.

Signed, sealed, and delivered in presence of—

——— ———.

Cross-Interrogatories to William G. Vinson.

1st Cross-interrogatory. Did you not write the original deed which there is a copy annexed to the direct interrogatories? If you did, state if B. B. Barnes did not have two sets of children by his different wives, & if the set by the last wife had not in some manner been provided for, & if this deed was not made for the purpose of providing for the elder set of children.

2nd Cross-interrogatory. Was not Benjamin B. Barnes sick at the time this deed was written, and did he not send for you to
322 write his will? State why the will was not written & why the deed was preferred. When the deed was written to whom was it delivered? Did Barnes' older set of children, or any one else for them, pay anything for the deed? Was the deed founded upon a valuable consideration (*i. e.*), a money or property consideration, or was it voluntary merely; that is to say, upon a consideration of blood & affection?

3rd Cross-interrogatory. Did not Benjamin B. Barnes retain possession of the land in said deed mentioned after the making of the same as he had done prior thereto up to the period of his bankruptcy, receiving the rents, issues, & profits of the same? If you state he was out of possession at any time, state when it was & for how long a period, & whether or not Andrew J. Barnes was not then in possession, & did he not hold as the agent or tenant of Benjamin B. Barnes. When did Andrew J. Barnes leave Georgia for Texas? When he left, who went into the possession of these lands, & who has since had the possession or management & control of these lands? Where did the other grantees in the deed live during all that
323 time? What claim, if any, did any of these feof-ees set up to said lands while in possession of Benjamin B. Barnes? How far did you live from these premises, & how far from Barnes prior to Barnes' bankruptcy, & for how long a time did you live there? State fully & particularly your means of knowing about Barnes' property & the situation thereof. How much of this land lies in Crawford county & how much in Houston?

4th Cross-interrogatory. State, if you know, what induced Benjamin B. Barnes to go into bankruptcy. What was his motive for so doing, & what did he particularly desire to effect thereby? Was it not to place his property in the hands of his wife & children & to defeat the collection of a judgment held against him by James N. Jones?

5th Cross-interrogatory. What was Benjamin B. Barnes' capacity & ability to attend to his business up to the time of his bankruptcy? Did he not manage his own property up to that period, & was he not fully capacitated & capable to do so?

6th Cross-interrogatory. To Josias Wright: Did you ever attend to the mill & property on these lands; if so, when? What wages did you receive therefor? From whom did you get possession &
324 how long did you remain in charge? To whom did you pay the rents & profits of the property while you were in charge of it? How far do you live from Benjamin B. Barnes, & how long have you lived there? Who has been in possession of this property, manageing & controlling, since you left it up to the time that Benjamin B. Barnes went into bankruptcy?

7th Cross-interrogatory. What was Benjamin B. Barnes' habits of attending to his own business ordinarily? What attention did he give to his business when under the influence of liquor? Would he not at such times decline to transact any business whatever? State, if you know, what induced Andrew J. Barnes to go to Texas. What did he say was the reason for his going? Was it not to get a settlement out of Benjamin B. Barnes, his father? If Benjamin B. Barnes owed him anything, was he not indebted to him for manageing this mill & mill property? Had not Andrew J. Barnes managed this mill & mill property before the making of the deed in question the same as he did afterwards?

8th Cross-interrogatory. To John D. Adams: Were you or your wife ever in possession of these premises? Did either of you, or
325 any of the other parties to whom the lands were deeded, ever receive any income therefrom; if so, when, & which of said parties received it? What amount was received, and from whom? State fully and particularly.

9th Cross-interrogatory. How long was Benjamin B. Barnes in possession of this land & these mills previous to his bankruptcy? When did Andrew J. Barnes leave for Texas? Who has been in possession of these lands since that time? Do you not know that Andrew J. Barnes was in possession of these lands before the making of the deed to him & others the same as he was afterwards, & that when he left Benjamin B. Barnes went into possession by himself or his tenant & agent, Josias R. Wright, & that Benjamin B. Barnes has since up to the period of his bankruptcy had the possession, management, & control thereof, paying the expenses of the same, such as taxes, &c., & receiving the rents, issues, & profits?

SAMUEL HALL &
WILLIAM A. LOFTON,
Of Macon, Ga., Att'ys for Wm. E. Collier, Assignee.

326 *Deposition of John D. Adams.*

STATE OF GEORGIA, *Houston County:*

By virtue of an agreement between the counsel in the case of "In the matter of Benj. B. Barnes, bankrupt, petition to subject lands to debts of bankrupt," pending in United States district court for southern district of Georgia, the undersigned, acting as commissioners, have caused John D. Adams, a witness in said case, to come before us, who, being duly sworn true answers to make *the* the annexed interrogatories, deposes and answers as follows:

To 1st interrogatory he answers: I was not present when the deed was executed. The consideration or inducement for said deed was this: B. B. Barnes had received by his 2nd wife a certain amount of negroe property & deeded this land to his children by his first wife to make them equal with them.

To 2nd interrogatory he answers: Children of B. B. Barnes.

To 3rd int. he answers: Andrew J. Barnes took possession of said property by right of the deed. He took and held it as agent for all the grantees.

To 4th int. he answers: I never had possession at all.

To 5th int. he answers: I don't know.

To 6th int. he answers: There was no such understanding on my part or any of the others that I know of.

To 7th int. he answers: Some in Texas & some in Georgia. He had in his own right in the State of Georgia about twenty-five or thirty thousand dollars' worth of property besides the land described in deed, consisting of land, negroes, mules, and
327 other perishable property, to wit: Twenty-five or thirty negroes, (12 or 15) twelve or fifteen hundred acres of land, eight or ten head of mules, three or four hundred dollars' worth of cows & hogs, about a thousand bushels of corn, &c. I was his son-in-law; visited his house frequently, and talked to him a great deal about his business.

To 8th int. he answers: I was his son-in-law; he owed about four thousand dollars.

To 9th int. he answers: He, B. B. Barnes, had a plenty of property to pay all of his indebtedness four (4) times, besides what was in the deed, and said deed was *bona fide*.

Answer- to Cross-Interrogatories.

To 8 cross-int. he answers: Not in person; my wife, Mrs. Adams, & Mellisa Adams received rents twice; don't know what rents the others received. The year 1871 was the last time we received any income; don't remember the amounts from B. B. Barnes as agent.

To 9th cross-int. he answers: He was in possession of them as agent of the grantees from December, 1867, till he went into bankruptcy. In the fall of 1866 Jo. Wright one year & B. B. Barnes the balance of the time. I do not. Josias Wright was employed by Andrew J. Barnes as agent for the grantees in copy deed, and B. B. Barnes never claimed the right or title after making said deed.
328 JOHN D. ADAMS.

Answered, subscribed, and sworn to before us this 2nd day of January, 1877.

W. C. WINSLOW, [L. S.]
Commissioner.
B. G. MULKEY, [L. S.]
Commissioner.

Depositions of Josias Wright.

STATE OF GEORGIA, *Houston County:*

By virtue of an agreement between the counsel in the case of "In the matter of Benj. B. Barnes, bankrupt, petition to subject land to debts of bankrupt," pending in U. S. district court for southern district of Georgia, the undersigned, acting as commissioners, have caused Josias Wright, a witness in said case, to come before us, who, being duly sworn true answers to make to the annexed interrogatories, deposes and answers as follows:

To 1st int. he answers: I do not know anything about the execution of the deed nor what was the consideration of said deed.

To 2nd int. he answers: They are the children of Benjamin B. Barnes.

To 3rd int. he answers: Andrew J. Barnes put me in possession of the mills as miller for him, showing me a deed about the
329 same time, which, I think, was the original deed of which the one hereto annexed is a copy; he told me it was a deed from B. B. Barnes to his children, who are named in this copy deed. The improvements were the mill-house, the tenant's house, barn, cribs; held possession of them twelve (12) months. I paid myself first out of the income and turned over the remainder to B. B. Barnes, as I was instructed by Andrew Barnes to do. The entire income was about seven hundred ($700.00) dollars before I paid myself.

To 4th int. he answers: Twelve months, because Wm. Thomas was hired in my place, to whom I gave possession; don't know to whom he was to render account or what account he was to keep of such rents, or to whom he was to render said account.

To 5th int. he answers: I don't know anything about it.

To 6th int. he answers: I know nothing about it.

To 7th int. he answers: Some live in Georgia & some in Texas; don't know what property he had, but think he was possesed
330 of considerable property, but the exact value I do not know, but probably ($20,000 or $30,000) twenty or thirty thousand dollars, or more.

To 8th int. he answers: I don't know; did not hear of his owing anything.

To 9th int. he answers: I have always heard that the deed was in good faith, but know nothing of my own knowledge.

Answer- to Cross-Interrogatories.

To 6th cross-interrogatory he answers: I attended to the mill; was employed by Andrew J. Barnes the 1st day of December, 1866, and left in December, 1867. I received a third, $\frac{1}{3}$, of the profits of the mill and $\frac{1}{2}$, half, of theprofits of the cards. I paid myself first and turned over the remainder to B. B. Barnes. I live four miles from him and have been living there twenty years. Billy Thomas, —— Owens, Josephus Vinson, Henry Estes, Lucius Evens; think that is all of them.

To 7th cross-int. he answers: He attended to his own business; attended to his business when in liquor about the same as
331 when sober as far as I know. To get rich or grow happy, I suppose, but know nothing of my own knowledge; he said in order to get a settlement of some business out of his father; don't know what B. Barnes owed Andrew Barnes or what for. Andrew J. Barnes was there after the deed was made, but don't known whether he was there before or not.

J. R. WRIGHT.

Answered, subscribed, & sworn to before us this 2nd day of January, 1877.

W. C. WINSLOW, [L. S.]
Commissioner.
B. G. MULKEY, [L. S.]
Commissioner.

Depositions of Wm. G. Vincent.

STATE OF GEORGIA, *Houston County:*

By virtue of an agreement between the counsel "in the case of Benj. B. Barnes, bankrupt, petition to subject lands to debts of bankrupt," pending in United States district court for southern district of Georgia, the undersigned, acting as commissioners, have caused Wm. G. Vincent to come before us as a witness in said case, who, being duly sworn true answers to make to the annexed interrogatories, deposes and answers as follows:

332 To 1st int. he answers: I wrote said deed and know it was done for the purpose of making his (B. B. Barnes') first wife's children's share of his property equal to that of his second wife's entailed property.

It was made at B. B. Barnes' house in Crawford County.

The consideration was ten (10) thousand dollars.

To 2nd int. he answers: B. B. Barnes' children.

To 3rd int. he answers: Andrew J. Barnes was in possession of the mill at the time the deed was executed; don't know positively, but think it was for the old man's benefit during his lifetime.

To 4th int. he answers: Don't know anything; don't suppose this question applies to me.

To 5th int. he answers: I don't know.

To 6th int. he answers: I don't know.

To 7th int. he answers: Some in Georgia and some in Texas. He owned, besides the land in copy deed, twelve (12) or fifteen (15) hundred of acres of land in Crawford county, Ga., worth about twelve thousand (12,000) dollars; owned a considerable
333 number of negroes, suppose about twenty-five (25), worth about ten thousand ($10,000.00) dollars or more; about eight (8) or ten (10) head of mules, worth about one thousand dollars. I was his neighbor.

To int. 8th he answers: I don't know.

To 9th int. he answers: I think the deed was *bona fide* as stated for the purpose, as answered above; know nothing further that will benefit the grantees in deed.

Answer- to Cross-Interrogatories.

To 1st cross-int. he answers: I did; he did; it was.

To 2nd cross-int. he answers: He did send for me to write his will. I did write his will, and know no reason therefore why I did not. It was by my suggestion that that much property was deeded to his first wife's children, because he wished his first wife's children to have that much more than his second wife's children to make hem equal. Don't know. Not that I know of.

To 3rd cross-int. he answers: That is my opinion, but
334 don't know; I think he did; I think the latter part of 1866. Josias Wright went to the mill; by whose authority I do not positively know. It is my opinion that he went there at the instigation of B. B. Barnes, but don't know positively. In Georgia and Texas none, that I know of—about a half ($\frac{1}{2}$) of mile—two (2) miles. About twenty (20) years I was a near neighbor & intimate with him. It is all in Houston nearly, except about seventy-five (75) acres which lies in Crawford.

To 4th cross-int. he answers: I think his object was to defeat a claim held by James M. Jones.

To 5th int. he answers: He managed his property up to that time himself, but I think his mind was somewhat impaired by strong drink.

Answered, subscribed, & sworn to before us the 3rd day of January, 1877.

W. C. WINSLOW, [L. S.]
Commissioner.
B. G. MULKEY, [L. S.]
Commissioner.

W. G. VINSON, *Witness.*

Acknowledgment of Service.

Due & legal service acknowledged, and on consent that interrogatories be executed without any commission, & I nominate
335 Alexander L. Miller & William E. Brown as commissioners to execute the same—12th Oct., 1876.

SAMUEL HALL,
Att'y for Collier, Assignee.

Endorsement: In United States district court for southern district of Georgia. In the matter of Benj. B. Barnes, bankrupt, & petition to subject land to debts of bankrupt. Interrogatories for John D. Adams, Wm. Vinsent, Josias Wright, for claimants to land.

Interrogatories for James M. Jones.

In the District Court of the United States for the Southern District of Georgia. In Bankruptcy.

In the Matter of B. B. BARNES, Bankrupt.

Petition by William E. Collier, assignee of said bankrupt, to sell 708½ acres of land situate in 6th district of Crawford & Houston counties, Georgia.

Interrogatories to be propounded to James M. Jones, who resides in Bibb county, Georgia, & who is a material witness for the petitioner in the above-mentioned case.

336 1st Interrogatory. State your connection with the above-mentioned case, your interest therein, & the attention you have given it since proceedings in bankruptcy were instituted. How often have you seen Benj. B. Barnes & conversed with him since the commencement of these last-mentioned proceedings? What was his capacity, mentally & physically, before, at, and subsequent to that time, to attend to his business & affairs? If at any time he was disabled from doing so, state the cause & character of his disability, & how long it continued, & your means & opportunity of knowing.

2nd interrogatory. What was Benjamin B. Barnes' motive for going into bankruptcy? What did he expect to effect thereby? Whose debt or claim did he design to get rid of? What property did he intend to appropriate to his family in the distribution of his estate, & how did he & they propose to accomplish this result? State fully & particularly how you know these facts.

3rd interrogatory. How long have you known the lands & mills in question? In whose possession were they & who controlled them during that time? How long was it after Barnes' bankruptcy before you heard of any counter-claim to these lands? State
337 these matters fully and particularly, & state the circumstances under which such counter-claim was set up. Did you at any time have any conversation with Andrew J. Barnes about releasing him from arrest under a *casa* & about his property in Georgia? If yes, when and where was it? State who were present & all that was said and done at the time.

SAMUEL HALL &
WILLIAM A. LOSTON,
Att'ys for Collier, Assignee.

Cross-Interrogatories.

1st Cross-int. Where do you now reside, & where have you resided since your debt was made?

2nd Cross-int. How did you see the lands in controversy from 25 September, 1863, until these proceedings in bankruptcy were instituted?

3rd Cross-int. What was the consideration of the note which is the subject of this suit—that is, of the debt you are now pressing against the estate of the bankrupt? Did you sell the negroes, or lend the money, or give this credit to Barnes when this debt was made without security? If so, why did you?

4th Cross-int. Were you well acquainted with the bankrupt
338 Barnes when this debt was contracted and when the deed to his older children for the land in question was made? Were you well acquainted with his property; the property he had when the deed was made? If so, describe the property; how much lands; their condition & value; where situated & about them. How many negroes had he? What was their value before the war & during the war? What was the description, character, & value of all the balance of his property?

5th Cross-int. What were you- opportunities of knowing the amount of Barnes' indebtedness at the time the deed was made? If you know of your own knowledge, state what was the amount of his indebtedness & how did that amount compare with the real value of the whole property, including the property in controversy. State what debts you know of your own knowledge that he owed at this time besides your own.

6th Cross-int. Did you not refuse, during the war, to take any payment of any of your debts in Confederate currency? Did you not refuse to take that currency in payment of this debt? Had this currency been offered to you during the war—say in 1863 or 4 or 5, or latter part of — war—would you have taken — in payment
339 of this debt—would you have taken it?

R. F. LYON,
Def'ts' Att'y.

Acknowledgment of Service.

Due & legal service of these interrogatories acknowledged, & all other & further service and notice waived. It is consented that the answers to these interrogatories may be taken without commission, which is hereby waived, & we nominate Nathaniel Harris to act as commissioner.

On the 26th Dec'r, 1876.

R. F. LYON.

Endorsement: In district court of United States for southern district of Georgia. In the matter of B. B. Barnes, bankrupt, & assignee's petition to sell 708½ acres land in 6th district of Crawford & Houston counties. Interrogatories for James M. Jones, of Bibb county, Georgia.

340 *Depositions of James M. Jones.*

GEORGIA, *Bibb County:*

In the District Court of the United States for Southern District of Georgia. In Bankruptcy.

In the Matter of B. B. BARNES, Bankrupt, and assignee's petition to sell 708½ acres [of] land in 6 dist. of Crawford & Houston Co's.

By virtue of an agreement between the counsel in the above-stated case, being a petition by William E. Collier, assignee of said bankrupt, to sell 708½ acres of land situate in the 6th district of Crawford & Houston counties, Georgia, pending in the said district court, the undersigned, acting as commissioners, have caused James M. Jones, the person named in the annexed interrogatories, a witness in said case, who resides in Bibb county, to come before us, who, being duly sworn true answers to make to the annexed interrogatories, deposes and answers as follows:

I. To the first direct interrogatory he answers: I was the executor of James S. Bealle, who died in Dooly county the twenty-eighth day of November, 1858. After selling his plantation & personal property I proceeded, on the 3rd day of January, 1860, to sell his negroes,
341 at the court-house door, in Vienna, Dooly county, Georgia. Benjamin B. Barnes was there and bought six slaves for the sum of 4,686 dollars, for which I received his note, payable January 1st, 1861, with interest from date, with Andrew J. Barnes and Robert A. Vinson as security, for which slaves I gave said Benjamin B. Barnes a bill of sale, without warranting them to be slaves for life. On the 2nd day of March, 1861, said Barnes paid me $1,000 and on the thirtieth day of April, 1862, he paid me 600 dollars in Confederate money, which sums were credited on the note at the time they were paid, which left due on said note (3,086) three thousand & eighty-six dollars, besides interest, which note was afterwards retained by me as part payment of a debt James S. Bealle, the testator, was owing me at the time of his death. I brought suit on the note in the year 1866, and, at the September term of Crawford superior court, to wit, on the 4th day of September, 1866, I obtained a judgment in my favor against said Benj. B. Barnes, Andrew J. Barnes, and William G. Vinson, as administrator of Robert A. Vinson, deceased. Execution was issued thereon
342 on the 28th day of September, 1866, but, under the then existing state of legislation, the stay law and other laws retarding the collection of debts having intervened, it was found impossible to enforce the execution by levy and sale of the defendants' property; yet so it is. I have seen B. B. Barnes, the defendant, every year since the war and appealed to him for payment, which appeal he has disregarded, knowing that there was no law to make him pay the debt. When the debt was proven in bankruptcy on the 1st day of June, 1874, it amounted to 6,629.17.

B. B. Barnes filed his petition in bankruptcy in April, 1874, and the first meeting of creditors was called to meet at Fort Valley, Georgia, on May 13, 1874, which meeting was adjourned over by the register till the 1st day of June thereafter, at which time the creditors met, proved their claims, and selected an assignee. The accounts of Mrs. Mary P. Barnes and Aden H. Barnes were objected to, when another meeting was appointed by the register, to be held at Fort Valley on the 15th day of the same month, to hear evidence in the case of Mrs. Mary P. Barnes and Aden H. Barnes as to the claims aforesaid.

343 Benjamin B. Barnes was present at all these meetings, and when an assignee was appointed on the first day of June he was then participating in the selection of assignee, asking my consent for the appointment of another person other than the present assignee, which consent I refused to give. Other meetings were held by the register in the same year, the 26th of June, the 11th of August, and 23rd of December. At most of these meetings I saw the bankrupt, Barnes, conversed with him, and believed him to be capacitated, mentally and physically, to attend to his business affairs, as well at these meetings as before and subsequent to his bankruptcy, except at the meeting on the 15th day of June aforementioned, when he was giving his evidence in support of the claims of Aden H. Barnes and Mary P. Barnes; then he did appear to be incapacited to testify, but whether from the effects of intoxication or a disposition not to answer the questions asked him by Col. Hall, who was representing the assignee and certain creditors, I cannot say; but I have never seen him so before or since. I am the oldest judgment creditor whose debt has been proven in said bankrupt case.

344 I attended numerous bankrupt meetings in the year 1875 concerning this same debt. I attended other meetings also during this time; also in 1876 attended many meetings, all in regard to this claim.

To the second direct interrogatery he answers The motive of B. B. Barnes in going into bankruptcy was to get clear of paying as much of the claim I held against him as possible. To do this he prevailed on his wife, Mary P. Barnes, and his son, Aden H. Barnes, and his son-in-law, Lucius S. Evans, to make out large accounts against him in order that they might come in, and, as they thought, share *pro rata* with my judgment in his assetts. This his counsel, Joel R. Griffin, who was also representing the claims aforesaid, assured him they could do if he (B. B. Barnes) would go into bankruptcy. In this way Barnes designed to defeat me in the collection of a large portion of my claim and appropriate the same to his family in the distribution of his estate. I know this from the following facts: Some time after proceedings in bankruptcy had commenced I had a conversation with

345 Joel R. Griffin, the attorney of the parties mentioned, who said to me that my judgment was no lien and would share *pro rata* only in the assets of Barnes with all the other creditors. I told Col. Griffin that he was mistaken, and after this conversation I saw Barnes, the bankrupt, & I told him of the conversation I had had with Col. Griffin, and that he had wrongly advised him,

which advice, I said, had no doubt influenced him to go into bankruptcy, and then I explained to him the nature of my claim, which was in judgment and the oldest judgment against him, and the first claim, therefore, that would be paid. Mr. Barnes did not deny my statement nor deny but that Col. Griffin had misled him, and seemed to realize what I said. Up to this time Mr. Barnes appeared to be a warm friend of Col. Griffin's. After this he had very little use for him.

To the third direct interrogatory he answers: Of my own knowledge I know very little of the lands and mills in question. I have never been at B. B. Barnes' home place or mill place but three times that I now remember. It was after the war, and only when passing by; hence I can speak of the lands & mill in question only from general report. I have often heard Benjamin Barnes speak of
346 owning a grist-mill and carding-machine. The grist-mill & carding-machine are two or three miles from his home place; have heard him claim the mills during the war. He often spoke of them as his property during this time. I never saw them, however, till after the war. I was at his home place in February, 1866, and again in August, 1873, and I passed by his mill place in August, 1873, and again in October, 1876. These places have been known generally as the property of B. B. Barnes. As late as the year 1874 his son-in-law, Lucius S. Evans, made out an account against B. B. Barnes for attending said mills for that year, and proved the same in bankruptcy as one of the creditors of the bankrupt. I never heard of any counter-claims to the lands and mills in question till about the month of January, 1875—at a bankrupt meeting held at Fort Valley in January, 1875. I saw the Hon. James Jackson and John D. Adams, who were present, seeking to ascertain from the assignee whether, if by selling some lands in possession of Aden H. Barnes belonging to Benjamin B. Barnes, there would not be sufficient property to satisfy the creditors without any necessity for the assignee to sell the lands
347 and mills in question. This was about nine months after Benjamin B. Barnes filed his petition in bankruptcy and returned these lands in his schedule and about six months after the conversation referred to above with Col. J. R. Griffin, in which I had notified him that his wife's, son's, & son-in-law's accounts would not share *pro rata* with my judgment in the assets of the bankrupt. Benjamin B. Barnes was also present at the meeting above mentioned, and this all occurred in his presence. I did have a conversation with Andrew J. Barnes, one of the defendants in my execution, which occurred at Fort Valley, Georgia, on the morning of the 6th day of December, 1866; he was then about moving to the State of Texas. This conversation took place while he was under arrest on a *casa* sued out by me. In that conversation Andrew J. Barnes said to me that he had no property, and that if I would release his body from the arrest and let him go to Texas he would put another person in his place who was responsible and who would see the debt paid. The person mentioned accepted Barnes' proposition with

the consent of all parties concerned. Barnes then left for
348 Texas. The parties present were Alexander W. Persons, an attorney representing me, and Thomas King, an attorney representing Andrew Barnes, both of whom have since died. Also B. B. Barnes, Mrs. Sarah Vinson, James W. Hardison, and others not now recollected. Mrs. Sarah Vinson was going to Texas with her brother, A. J. Barnes. Many of Barnes' relations were present to see him & his sister leave for Texas.

Answer- to Cross-Interrogatories.

To the 1st cross-interrogatory he answers: I now reside in Macon, Georgia, where I have resided ever since the debt was made.

To the 2nd cross-interrogatory he answers: In August, 1873, and in October, 1876, I was passing the road where the mills are situated, and only saw the lands on each side of the road, but how far the line extended from the mills on either side cannot say; consequently I have seen but little of these lands. This constitutes the only time I have seen the lands & mills.

To the 3rd cross-interrogatory he answers: The considera-
349 tion of the debt in question was slaves which belonged to the estate of James S. Bealle, who died in Dooly county, Georgia, November 28, 1858. The negroes were sold by me, as his executor, under an order of the court of ordinarry of said county, at public sale, in Vienna, on Tuesday, January 3rd, 1860. The negroes were bid off by Benj. B. Barnes in person. According to the terms of sale, Barnes was to give his note, with security, payable January 1st, 1861. The note was so given, with Andrew J. Barnes and Robert A. Vinson as security. I gave Barnes a bill of sale for the slaves, but without warranting them to be slaves for life. After B. B. Barnes had paid 1,600 dollars on the note, part in Confederate money, leaving balance due of 3,086 dollars, besides interest thereon, the note was taken by me in part payment for money due and owing to me by Jas. S. Bealle at the time of his death. I did not, therefore, sell the negroes to Barnes without security.

To the 4th cross-interrogatory he answers: I was well acquainted with Barnes, the bankrupt, when this debt was contracted and when the deed to his older children for the land in question was
350 made. My acquaintance with him was formed in Macon, & at Fort Valley, where I have often seen him; was never at his house in Crawford county that I recollect till after the war; therefore I had no means of knowing what property he had when the deed was made. I have examined his tax returns since the war, and can speak from these as to his property. The tax digest- for 1860, 1861, 1862, 1863, & 1864 of Crawford county are not to be found, and I cannot, therefore, speak with reference to these returns. The returns for 1859 and the returns from 1868 up to 1875 of Crawford county I have seen. In 1859, according to said returns, he owned in Crawford, Dooly, and Terrell counties 2,057 acres of land, which he valued at 15,400 dollars; he owned, also, seventeen negroes, valued at (10,200) ten thousand two hundred dollars; money

& solvent debts, one hundred dollars; other property not before enumerated, 1,541 dollars, making a total of 27,241 dollars of property. In the year 1868, the next return which I have seen, he returned 1,260 acres of land, being lots 154, 155, 156, 133, 134, 135, 194, in the sixth district, valued at 5,040 dollars; money & solvent debts,
351 126 dollars; all other property not before enumerated, 1,503 dollars; total property in 1868, $6,669 *dollars*. With some variations Mr. Barnes returned the same property for taxes each year till 1874. In 1875 he returns 500 acres of land for his homestead, allowed in bankruptcy, being lot- 155, 156, and 100 acres of lot 133, in the sixth district of Crawford county. In Houston county in 1863, the year the deed in question was made, he returned town property in Houston valued at 1,200 dollars; this was all. In each year subsequent till the year 1870 he returns no property in Houston so far as I can find. In 1870, however, he returns in the sixth district of Houston county 857 acres of land, consisting of lots Nos. 197, 220, 228, parts of lots 219, 221, valued at $4,285; town property, $1,000. The tax digest of 1871 could not be found. In 1872 he returns the following lots of land in said county, to wit: Lots Nos. 119, 220, 228, 197, 221, 230, 196, valued at $3,600; town property, $1,000. In the year 1873 he returns the same property in said county as his own; also in 1874.

He returns no negroes in Houston county in 1863. I know nothing about his negroes other than as appears from his returns,
352 with the exception of the six negroes purchased of me as executor of the Bealle estate, in January, 1860. These 6 negroes were valued in 1860 at 4,686 —, at time of purchase. Whether he owned these in 1873 I do not know. They were good negroes when purchased by him. The lands returned by Barnes in Houston county in 1870, 1872, 1873, & 1874 are the lands now in controversy, except the town property, which are also returned in the bankrupt schedule of said Barnes.

To the 5th cross-interrogatory he answers: I know nothing of the indebtedness of Barnes at the time the deed was made, save that I had at that time the debt I now hold against him, which at the time the deed was made amounted to the sum of $4,171.73 according to calculation made at that time. What other debts he owed I had no opportunity of knowing. I have stated that I do not know what the amount of his indebtedness was at the time the deed was made; neither do I know how much property he had at that time; therefore I cannot say how the value of his property compared with his indebtedness. I know of no other debts of my own
353 knowledge that he owed besides my own.

To the 6th cross-interrogatory he answers: I never refused, during the war, to take confederate money for any debts due me individually, or for any debts due the estate of James S. Bealle until after July, 1863. Early in that month there were several successive reverses to the armies of the confederate States, which caused the confederate currency to depreciate as low as ten cents in the dollar compared with gold. Up to that time I did take for the estate of James S. Bealle $50,000 *dollars* of confederate money, all

for contracts made before the war; and up to that time, on my individual account, I took the sum of 51,840 dollars of confederate money, all on contracts made before the war, which turned me out after the war not more than 4,000 dollars in greenbacks, because I would not speculate during the war even to the extent of a dollar. I lost 64 slaves by the war, also, belonging to myself & family, owned before the war; this also including their natural increase during the war. I did take 600
354 dollars of confederate money on this debt from B. B. Barnes on the 30th of April, 1862, which is duly credited on the note, as heretofore stated in answer to first interrogatory. After this no more confederate money was ever tendered me for this debt. In September, 1863, some friend of B. B. Barnes saw me in Macon and said Mr. Barnes would like to pay the note I had against him. I told him he could not pay it in confederate money as I had already taken confederate money enough for contracts made before the war to well nigh ruin me. I do not recollect who this friend was, but believe now it was Mr. James W. Hardison, a neighbor of Mr. Barnes. At that time confederate money was not worth more than seven cents on the dollar in gold. About the same time also, as I was passing Fort Valley on the cars, B. B. Barnes saw me while passing and said he would like to pay the debt. I told him I could not take any more confederate money. He did not tender it either before or after I told him this.

If Mr. Barnes had offered me confederate money for this debt at any time before July, 1863, I would have taken it. After
355 that time I would not have taken it. I refused it at no time before July 1863, from any one who offered it.

JAMES M. JONES.

Answered, subscribed, and sworn to before us this eighteenth day of January A. D. 1877.

WALTER B. HILL, [L. S.]
Commissioner.
N. E. HARRIS, [L. S.]
Commissioner.

Endorsements on Envelope Containing Foregoing Depositions.

In the matter of Benj. B. Barnes, bankrupt, and petition of Wm. E. Collier to sell 708½ acres land in 6th district of Crawford & Houston counties. In bankruptcy. In the United States district court for the southern district of Georgia. Interrogatories of James M. Jones. Col. James McPherson, clerk district court United States, Savannah, Georgia. Interrogatories of James M. Jones, cross. Received at Macon, Georgia, from N. E. Harris, one of the commissioners, for transportation to Savannah, Jan'y 18, 1877. James M. Jones. Received from James M. Jones, at Savannah, Georgia, this 12th day of November A. D. 1877. Willard F. Wam, — deputy —. Written across seal: Leave to open. J. Erskine, judge. November 10, 1877.

356 *Interrogatories for Benjamin B. Barnes.*

In the United States District Court for the Southern District of Georgia.

In the Matter of BENJAMIN B. BARNES, Bankrupt, and petition by James M. Jones, as creditor, by his assignee, to subject 708½ acres of land in 6th district of Crawford & Houston counties to debts of bankrupt.

Interrogatories to be exhibited to Benjamin B. Barnes, the bankrupt, residing near Fort Valley, & a material witness for the claimants to the land in controversy as against assignee & creditor.

Interrogatory 1st. Look at the annexed copy deed, & state who made the original deed, when it was made, and to whom.

2nd Interrogatory. What relation are the grantees in said deed to you? How many other children did you [have] *had you* at the date of that deed?

3rd Interrogatory. What other property did you have at the date of this deed besides what *what* is mentioned in this deed?

357 How much land? Where situated? What was its value at that time? How many slaves did you have at the time, & what was their value? What other property did you have? How many mules, horses, cows, hogs, plantation tools, corn, fodder, wagons, carriages, and what were the value of this whole at the time?

4th Interrogatory. What debts did you owe at the time, to whom, & what was the amount?

5th Interrogatory. What did you do with the other property besides this mentioned in this deed? Did you keep it, sell it, give it away, or what disposition did you make of it?

6th Interrogatory. Why did you make this conveyance? What motive had you in this conveyance?

7th Interrogatory. To whom did you surrender or deliver the possession of the property after making the deed, and how long did such hold such property?

8th Interrogatory. After the person referred to in 7th direct interrogatory had quit the possession of this land to whom did he turn it over, and for what purpose, and on whose account?

358 How came him to quit the possession of this land and give it to another? Where did he and the most of the others of grantees of this deed move, and which of them went with him, & where do they reside now?

9th Interrogatory. Have you had the possession of said land since that time; if yea, when did you get its possession; how came you to do so; how long have you held it; for whom have you held it, & as whose property did you so hold it, and on what terms?

10th Interrogatory. How came you to go into bankruptcy? What was your mental & physical condition at the time of this application? Who advised and influenced you to this course? What is your condition physically & mentally now? What have you lost by going into bankruptcy, & what have you been benefited by?

11th Interrogatory. State all you know that will make in favor of claimants to this land, under this deed, especially everything that will go to show that it was made in good faith as a father's advancement to those of your children named in said
359 deed, and with no intent to hinder or defraud any of your creditors.

R. F. LYON,
Att'ys for Claimants to Land, &c.

Cross-Interrogatories.

1st Cross-interrogatory. How much of the lands inquired about lie in Crawford county & how much in Houston? Were you not in very low health & apprehendsive of death when the deed inquired about was written? Did you not send for William G. Vinson to write your will, & were you not induced by him to change that intention & to make the deed? Was not the deed intended to opperate as & have the effect of a will? Who had the deed recorded in Crawdford county? Did you not do it? When did you first part with the possession of the deed? Was it not after Jones obtained his judgment against you in Crawford superior court, & how long was it after that time? Did you not have this deed in your possession when you went into bankruptcy? Who had this deed recorded in Houston
360 county, & how long before it was recorded there did you deliver it, & to whom & why did you deliver it?

2nd Cross-interrogatory. Was not Andrew J. Barnes in possession of the mills & lands inquired about at the making of said deed as your agent, manager, or tenant, & did he not remain in possession until he left for Texas in the winter of 1866? When he went to Texas did he not leave the premises in the possession of Josias R. Wright, with your knowledge, approbation, & consent? What did Wright receive for his services during the year 1867? Did he not pay to you the income of the property for that year? Were you not in the possession of the lands & mills, as you always had been, from that time until you turned them over to your assignee in bankruptcy, either by yourself, your agents or tenants, receiving & enjoying the rents, issues, & profits thereof? Did you not always give in these lands & mills for taxes as your own, as well after as before making said deed? Did not your son-in-law, Lucius S. Evans, prove & have allowed him against your estate as a bankrupt an account as a laborer at these mills just previous to
361 your going into bankruptcy, & did not your son, Aden H. Barnes, make out & prove against you, as aforesaid, a similar account for labor bestowed on the mills in the early part of the year 1874 or in 1873?

3rd Cross-interrogatory. How far do you now reside from Fort Valley, & how far did you live from that place in 1873 & 1874? Was not your mental derangement, inquired about in direct interrogatories, the immediate effect of excessive indulgence in strong drink? Was your mind impaired at any other time than when you were under the influence of liquor? Now, do you not know that

your sole purpose for going into bankruptcy was to defeat the collection of the judgment against you in James M. Jones' favor, & that your wife & all your children concurred with you in this design & aided you in carrying it into effect? Did you not fall out and quarrel with your attorney, Joel R. Griffin, because he failed in accomplishing this object for you?

SAMUEL HALL,
W. A. LOFTON,
Of Macon, Ga., Att'ys for William E. Collier, Assignee, &c.

362 *Copy of Deed from Benjamin B. Barnes.*

GEORGIA, *Crawford County:*

This indenture, made and entered into this the twenty-fifth day of September, in the year of our Lord eighteen hundred and sixty-three, between Benj. B. Barnes, of the county and State aforesaid, of the one part, and Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, of —— county, Texas; Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, Remillison ——, of the county and State aforesaid, of the other part, witnesseth:

That I, the said Benj. B. Barnes, have, for and in consideration of the sum of ten thousand dollars to me in hand paid at and before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto them, the said Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, A. J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, [and] Remillison Barnes, a certain tract or parcel of
363 land containing seven hundred eight & a half acres, be the same more or less, known and distinguished as lots No. 197 one hundred and ninety-seven, part of said lot lieing in Crawford and part in Houston county; fifty acres of lot No. 196, one hundred and ninety-six, northeast corner of said lot, Mossy creek being the line; one hundred acres, the west half of lot No. 219, two hundred & nineteen; lot No. 220, two hundred and twenty; the south half of lot No. 221, two hundred & twenty-one; fifty acres, more or less, of lot No. 231, two —— thirty-one; the branch being the southeast line, lieing in the northwest corner of said lot, and five acres up and down the creek of lot No. 196, one hundred and ninety-six; also water privilege on lot No. 196, one hundred and ninety-six; said land lieing and being in the sixth district of Houston county, with the exception of the 50 acres of lot No. 196 and the northwest corner of lot No. 157, which are in the sixth district of Crawford county; to have and to hold said bargained premises unto the — Moses Barnes, John Barnes, Benj. Barnes, Patience Lightfoot, Andrew J. Barnes, Sarah Vinson, Martha
364 Cowart, Eliza A. Adams, & Remillison Barnes, their administrators, executors, heirs and assigns, with all the rights, members, and appurtenances thereunto attached or in any manner belonging, to their only use, benefit, and behoof, forever; and the said

Benjamin B. Barnes, for himself, his administrators, executors, and assigns, will warrant and forever defend the right and title thereof against the claim of themselves or any person or persons whatever.

In testimony — the said Benj. B. Barnes hath hereunto set his hand and affixed his seal the day & year above written.

BENJ. B. BARNES.

Signed, sealed, and delivered in presence of—
D. G. JOHN.
W. G. VINSON.
J. D. HARTLY, *J. P.*

Acknowledgment of Service.

Due and legal service and notice acknowledged, and we consent that the interrogatories be executed without a commission. I nominate A. Lideson & Wm. E. Brown as commissioners to execute these interrogatories.

12 Dec'*t*, 1876.

SAMUEL HALL,
Att'y for Collier, Assignee.

365 Endorsements: In United States *southern* district court for southern district of Georgia. In the matter of Benj. B. Barnes, bankrupt. Petition to condemn lands claimed by John D. Adams *et al.* Interrogatories for Benj. B. Barnes.

Depositions of Benj. B. Barnes.

STATE OF GEORGIA, *Houston County:*

By virtue of an agreement between the counsel in the case of "In the matter of Benj'*r* B. Barnes, bankrupt, petition to subject land to debts of bankrupt," pending in United States district court for southern district of Georgia, the undersigned, acting as commissioners, have caused —— ——, a witness in said case, to come before us, who, being duly sworn true answers to make to the annexed interrogatories, deposes and answers as follows:

To the 1st interrogatory he answers: The deed was made by myself the 25th day of September, (1853) eighteen hundred & fifty-three, to Moses, John, & Benj. & Andrew J. Barnes, Patience
366 Lightfoot, Sarah Vinson, Martha Cowart, Eliza A. Adams, & Remillison Adams.

To 2nd interrogatory he answers: The grantees were my own children; no other children in lawful wedlock.

To 3rd interrogatory he answers: Fifteen hundred acres [of] land situated in Crawford county, Georgia, valued at fifteen thousand dollars; twenty-six slaves, value, thirteen thousand dollars; eight mules, value, seven hundred dollars; cows, value, sixty dollars; corn, wagons, & plantation tools, value, one thousand dollars.

To 4th interrogatory he answers: Over three thousand dollars to Madison Jones, administrator; do not remember that I owed other debts, except small amounts, not exceeding three hundred dollars in all.

To 5th interrogatory he answers: Slaves kept till they were freed; other property kept till it was rendered in my bankruptcy schedule.

To 6th int. he answers: Made this deed to make my first wife's children equal with my second wife's children.

To 7th interrogatory he answers: Turned over the property to A. J. Barnes, for himself and the others mentioned in the deed, as their agent.

367 To the 8th interrogatory he answers: Turned it over to J. R. Wright, as a miller. A. J. Barnes lived with me, & the most of the other grantees lived in Texas & now reside in Texas.

To the 9th interrogatory he answers: I held possession in connection with J. R. Wright, & returned it to the tax receiver as agent for my children, whose names are mentioned in the deed, & charged them nothing as commissions for the services.

To 10th interrogatory he answers: Joel R. Griffin induced me to go into bankruptcy, because I was an insane man. I was almost an imbecile, mentally & physically. I have lost nearly all I had & received no benefit from bankruptcy; am now but little better.

To 11th interrogatory he answers: I made this deed for the purpose stated above, & with no intention to defraud any of my creditors, as I had other property amply sufficient to more than pay all my indebtedness.

368 *Answer- to Cross-Interrogatories.*

To 1st cross-interrogatory he answers: The land described in the deed all lies in Houston county, except about fifty acres in Crawford county. My health was good at the time the deed was made; did not send for W. G. Vinson to write my will & was not induced by him to make the deed. It was not intended to operate as a will; do not know who had the deed recorded; delivered the deed immediately after making it; do not know who had the deed recorded in Houston county. Deed was made before the judgement was obtained by Jones in Crawford superior court. Deed delivered to Andrew J. Barnes; don't know when it was recorded.

To 2nd cross-interrogatory he answers: A. J. Barnes was in possession as my agent at the time I made the deed. He remained in possession for himself and as agent for the other grantees till he went to Texas, from the time I made the deed. He left the premises in possession of J. R. Wright, but not with my approbation or consent; do not know what Wright received for his services in

369 the year 1867; do not remember that he turned over any profits from the property to me; never received any profits from the mill or land; returned the property as agent for the grantees; do not know whether Lucius Evans & Aden Barnes proved accounts against me for labor on the mill.

To 3rd cross-interrogatory he answers: Live seven miles from Fort Valley now & resided same distance in 1874; do not think my mind was impaired by strong drink; think my mind is better when half drunk. It was not my sole purpose to defeat Jones' suit in going into bankruptcy. I did have a quarrel with Joel R. Griffin because he told me a lie.

B. B. BARNES.

Answered, subscribed to, and sworn to before us this 2nd January, 1877.

W. C. WINSLOW, [L. S.]
Commissioner.
W. E. BROWN, [L. S.]
Commissioner.

Endorsements on envelope containing foregoing depositions: District court United States. Collier, assignee, — Adams *et al.* (postmark torn off). Hon. Jas. McPherson, clerk United States district court, Savannah, Georgia. C. Winslow, commissioner. To
370 be forwarded. Mail January 4, 1877. Love, P. M. Signed across seal, E. Brown, commissioner. W. C. Winslow, commissioner. Received by mail January 5th, 1877. Jas. McPherson, clerk. Written across seal, Let these interrogatories be opened 12 January, 1877. J. Erskine, judge.

Interrogatories for Josias R. Wright.

UNITED STATES OF AMERICA, *Southern District of Georgia:*

District Court U. S., Southern District of Georgia.

In the Matter of BENJAMIN B. BARNES, Bankrupt.

WILLIAM E. COLLIER, Assignee,

vs.

ELIZA ADAMS, MOSES BARNES, JOHN BARNES *et al.*

Petition of assignee to sell lands.

Interrogatories to be propounded to Josias R. Wright, who resides in Houston county, Georgia, in said southern district, over one hundred miles from the city of Savannah, & who is a material witness for the petitioner, William E. Collier, assignee, &c.

1st Interrogatory. Did you attend to the mills on the land in question? If so, describe the lands by lots, numbers, & districts. State what kind of mills were on this land. When did you first commence attending to the mills? Who employed you? If
371 you answer Andrew J. Barnes, state how long said Andrew J. Barnes remained after employing you, & when he removed from Houston county & to what place he removed. How long did you keep the mills after his removal & with whom did you account

for your management of the same after his removal? Who exercised control over said mills & land before & after Andrew J. Barnes removed, & how long was such control exercised before & after said Barnes' removal? If Benjamin B. Barnes did so, state in what character he did it?

2nd Interrogatory. State if Andrew J. Barnes was in possession of said mills & land prior to 25th day of September, 1863; &, if so, in what character & under whom he held them. After that time time and until he left for Texas was there any change in his possession; and, if so, what was it? Who has possessed and controlled said mills ever since his departure? Give the names of each successive manager of the mills & state under whom each of them held & acted.

3rd Interrogatory. Have you not answered interrogatories taken in this case before, when & where, & who were the commis-
372 sioners taking your answers? *What* came you to state, in answer to said interrogatories, that when Andrew J. Barnes put you in possession of the mill as miller for him he showed you a deed about the same time which you thought was the original deed, a copy of which was annexed to said interrogatories? Is that statement correct; &, if not, state wherein & how it is incorrect & how you came to give such an answer, if such answer was given. In answer to the cross-interrogatory "Had not Andrew J. Barnes managed this mill & property before the making of the deed in question the same as he did afterwards?" you are represented as saying, "Andrew J. Barnes was there after the deed was made, but don't know whether he was there before or not." Now, state if you made such answer, &, if you did, how you came to make it, & state, further, what is the real fact in relation to the matter enquired about in said cross-interrogatory.

4th Interrogatory. Do you know why Andrew J. Barnes removed to Texas? What reason did he give for going? What property did he own at that time independent of his father, Benjamin B. Barnes? Was said Benjamin B. indebted to him; &, if so, what sum & on what account?

373 5th Interrogatory. Relate all you know going to show that Benjamin B. Barnes exercised ownership & control over said mills & land up to his going into bankruptcy & for what number of years prior to that event? How far did you live from him during that period? State fully your opportunities of knowing. Did not some of his children by his first wife live in Georgia during that time? If so, give their names & places of residence, & state any acts of ownership & control exercised by any or either of them over the property in question.

SAMUEL HALL,
Of Macon, Ga., Att'y for Petitioner.

Cross-Interrogatories.

1st Cross-interrogatory. Has not Jones talked to you about what you would swear to in this case and what you had already sworn to in a former sett of interrogatories; & when did he talk to you about it, & what did he say to you?

2nd Cross-interrogatory. State all you know that will make in favor of defendants.

R. F. LYON,
Def'ts' Att'y.

374 *Acknowledgment of Service.*

Due and legal service of these interrogatories acknowledged; copy & further service & notice waived, & consent that answers be taken without commission. We nominate as commissioners, by respondents, to take answers, A. L. Miller and John Frontman, Esqrs., 18 March, 1878.

R. F. LYON,
Resp'ts' Att'y.

Depositions of Josias R. Wright.

UNITED STATES OF AMERICA, *Southern District of Georgia:*

District Court U. S. for Southern District of Georgia.

In the Matter of BENJAMIN B. BARNES, Bankrupt.

WILLIAM E. COLLIER, Assignee, &c.,

vs.

ELIZA ADAMS, MOSES BARNES, JOHN BARNES, *et al.*

Petition by assignee to sell lands.

By virtue of an agreement of counsel for the parties in the above cause, the undersigned, acting as commissioners, have caused Josias R. Wright, the witness named in the original interrogatories hereto annexed, to come before us at Fort Valley, Houston county, Georgia, who, being sworn duly to make true answers to the said inter-

375 rogatories, deposes and answers as follows:

To 1st interrogatory he answers: I did attend to the mills on said land. I can't give the lots & numbers. The tract was about 700 acres, & known as the Barnes mill place, & lying mostly in the 6th district of Houston, with a small portion in Crawford. It was a grist-mill with two sets of rock, also with one wool-carding machine, & also a rice-mill. I commenced there about December 1st, 1866; Andrew J. Barnes employed me. He remained a few days after; perhaps a week or more. He left then for Texas. I kept the mills till December 1st, 1867, and accounted to B. B. Barnes for the proceeds & management of the mill. I don't know who controlled the mills before Andrew J. left. After he left I know that B. B. Barnes controlled them & got the proceeds; but I don't know in what character he did so.

To 2nd interrogatory he answered: Andrew J. Barnes was in possession of said mills & lands prior to Sept. 25th, 1863, & acted as miller, but in what character he held possession & under whom I do not know. There was no change in the possession after that date & until he left for Texas; if there was any I could not see it & did not know it.

B. B. Barnes has controlled the mills ever since Andrew J.'s departure and up to the time he, B. B., went into bankruptcy.
376 The successive managers or millers are as follows: I began on Dec. 1st, 1866, & quit Dec. 1st, 1867. Then Mr. Billy Thomas staid there 2 years, then a man named Owens one year, then one Estes one year, then Josephus Vinson one year, then Luciuss Evans one year & part of the next, when B. B. went into bankruptcy & his assignee took possession. I think each one of them held & acted under B. B. Barnes—of course I cannot be positive as to this, but I believe it, as all the appearances looked that way & my successors went in & acted as I had done in accounting to B. B. Barnes.

To the 3rd interrogatory he answers: I have answered interrogatories taken in this case before. I think it was January, 1877. It was done at Fort Valley, Ga., W. C. Winslow & B. G. Mulky being the commissioners. The answer referred to was probably made by my not speaking accurately or by the commissioners not writing out my answer correctly—for it does not express the exact facts that transpired. That statement or answer is not correct in this.
377 Andrew J. Barnes showed me a paper at that time & said it was a deed. I did not read it or examine it at all, & do not know what it was, & the mistake in my answer must have occurred as I have above explained.

In reference to my answer to the cross-interrogatory mentioned I will say that it is not correct, & the commissioners either did not understand my answer to the question or failed to write it correctly; for the real facts are that Andrew J. was staying at the mills before Sept. 25th, 1863, & that I know of my own knowledge. I do not know if there was a deed or whether that was its date; but I know that he was staying at the mills before that date, & had been off and on for a very considerable length of time.

To 4th interrogatory he answers: I only know what Andrew J. told me as to his reason for going to Texas. He told me he was going out there to get a settlement with his father, Benj. B.; he said he could not get a settlement otherwise, & he was going for that purpose. This was a short time before he left. I don't know
378 what property he then owned—he had no visible property except some household furniture & a little money, &, perhaps, some cattle; this was all sold a few days before he left. I don't know whether Benj. B. was indebted to him in any sum, except that I inferred so from what he said about going to Texas to force a settlement.

To 5th interrogatory he answers: All I know going to show that B. B. Barnes owned the mills & land up to his bankruptcy is that he got the proceeds thereof; but I don't know in what capacity, &

so do not really know any other facts on which to answer the question. I have lived within five miles of him for 30 years, & I had no special opportunities for knowing other than the neighbors generally. During the time referred to in the question Andrew J. lived in Georgia till he went to Texas. Mrs. Eliza Adams also lived there, & still lives in Georgia, in Macon county. Mrs. William Adams also lived in Georgia then, & in Macon county also. I don't know any acts of ownership exercised by them, or either of them, over the property in question.

379 *Answer- to Cross-Interrogatories.*

To 1st cross-interrogatory: Jones has talked to me about this case three different times; asked me what I knew about the facts of the case; told me he intended having my interrogatories taken, & wished first to know exactly what I knew of the matters in order that his attorneys might properly & intelligently frame the questions. I told him all that I knew about the matter. He also talked to me about my answers to the former set of interrogatories, & told me how they had been written out & called my attention to the two answers referred to in the above direct interrogatories, & I explained to him about those two answers just as I have stated in my answer to the 3rd interrogatory above.

To 2nd cross-interrogatory: I have already stated in my answers to the above direct interrogatories all the facts in my knowledge about this case.

J. R. WRIGHT.

Answered, sworn to, & subscribed before us this March 30, 1878.

A. L. MILLER, [L. S.]
Commissioner.

JNO. F. FRONTMAN, [L. S.]
Commissioner.

380 *Endorsements on Envelope Containing Foregoing Depositions.*

In the matter of Benj. B. Barnes, bankrupt. W. E. Collier, assignee, *vs.* Eliza Adams, Moses Barnes, John Barnes, *et al.* Petition for leave to sell land, &c. In district court United States, southern district of Georgia. To the clerk district court United States, Savannah, Ga. Signed across seal, A. L. Miller, commissioner, (L. S.) Jno. F. Troutman, commissioner, (L. S.) I hereby certify that I received the within depositions from the hands of A. L. Miller, one of the commissioners, April 3rd, 1878, & that they have been in my possession & unopened ever since. Savannah, Nov. 27th, 1878. James M. Jones. Sworn to before me, W. P. Ward, clerk. Received from the hands of James M. Jones Nov. 27th, 1878. W. P. Ward, clerk. Opened by consent. R. F. Lyon, def'ts' att'y. S. Hall, att'y for respondants.

381 *Interrogatories for William G. Vinson.*

In the District Court of the United States for the Southern District of Georgia.

In the Matter of BENJAMIN B. BARNES, Bankrupt.

WILLIAM E. COLLIER, Assignee,

vs.

ELIZA A. ADAMS, MOSES BARNES, JOHN BARNES, *et al.*

Petition by assignee to sell land, &c.

Interrogatories to be propounded to William G. Vinson, a material witness for the petitioner, William E. Collier, assignee, & who resides in Crawford county, in said southern district of Georgia, & whose residence is over one hundred miles from the city of Savannah.

1st Interrogatory. Please look at the annexed copy deed & state if you ever saw the original of which it is a copy; state who wrote the original; at whose instance was it written. What was Benjamin B. Barnes' condition at that time as to health? How did he come to make this deed? State fully & particularly all the circumstances attending the transaction & especially what kind of an instrument he fully desired to have drawn, & how he came to
382 change his plan, & also how meny sets of children he had, & his reason, if any, for making provision for the set mentioned in said deed.

2nd Interrogatory. After the execution of said deed who remained in possession of the land thereby conveyed? If you answer that Benjamin B. Barnes did, state how he came to do so. How long did he thus remain in possession? During that time who received the rents, issues, & profits of these lands & the mills on them? During that time how far did you reside from Benjamin B. Barnes, & what were your means or opportunities of knowing about these matters?

3rd Interrogatory. What was the consideration of said deed? What amount of money or property did B. B. Barnes receive for it or demand? State fully to whom, if to any body, did B. B. Barnes deliver this deed when it was executed. How long did he retain it in his possession? Who caused this deed to be recorded in Crawford county? Relate all you know going to show that Benjamin B. Barnes held possession of said lands & controlled the same, using them as his own after the execution of the said deed as he had done
383 before. At the execution of said deed what was the purpose of Benjamin B. Barnes as to the possession of said lands? If he did not turn over the possession of them immediately, state his reason for not doing so.

SAMUEL HALL,
Pitrt. Att'y.

Copy of Deed.

GEORGIA, *Crawford County:*

This indenture, made and entered into this the twenty-fifth day of Sept., in the year of our Lord eighteen hundred and sixty-three, between Benj. B. Barnes, of the county and State aforesaid, of the one part, and Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, of —— county, Texas; Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, Remillison Barnes, of the county and State aforesaid, of the other part, witnesseth:

That I, the said Benj. B. Barnes, have, for and in consideration of the sum of ten thousand dollars to me in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, granted, bargained, sold, and conveyed,
384 and do by these presents grant, bargain, sell, and convey, unto the said Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, A. J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, Remillison Barnes, a certain tract or parcel of land containing seven hundred eight and a half acres, be the same more or less, known and distinguished as lots No. (197), one hundred and ninety-seven, part of said lot *lie*ing in Crawford and part in Houston county; fifty acres of lot No. 196, one hundred and ninety-six, northeast corner of said lot, Mossy creek being the line, one hundred acres; the west half of lot No. 219, two hundred and nineteen; lot No. 220, two hundred and twenty; the south half of lot No. 221, two hundred and twenty-one; fifty acres, more or less, of lot No. 231, two [hundred and] thirty-one, the branch being the southeast line, *lie*ing in the northwest corner of said lot and five acres up and down the creek of lot No. 196, one hundred and ninety-six; also water privilege on No. (196) one hundred and ninety-six—said land *lie*ing & being in the sixth district of Houston county, with the exception of the 50 acres of lot No. 196 and the northwest corner of lot No. 157, which are in the 6th district of Crawford county; to have
385 and to hold said bargained premises unto the — Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, & Remillison Barnes, their administrators, executors, heirs, & assigns, with all the rights, members, and appurtenances thereto attached or in any manner belonging, to their only proper use, benefit, and behoof, forever; and the said Benj. B. Barnes, for himself, his administrators, executors, and assigns, will warrant and forever defend the right and title thereof against the claim of themselves or any other person or persons whatever.

In witness whereof the said Benj. B. Barnes hath hereunto set his hand and affixed his seal the day and year above written.

(Signed) BENJ. B. BARNES. [L. S.]

Signed, sealed, and delivered in the presence of—
D. G. JOHN.
W. G. VINSON.
J. D. HARTLEY, *J. P.*

CLERK'S OFFICE, SUP'R COURT,
CRAWFORD COUNTY GEORGIA.

The within and foregoing deed recorded in clerk's office, sup. court of said county, in Book G, pages 667 & 668, on this 26th March, 1864.

(Signed) JAMES J. RAY, *Clerk.*

386 GEORGIA, *Houston County:*

CLERK'S OFFICE SUP. COURT.

Recorded in Book "O," pages 47 & 48.
30 Sept., 1874.
(Signed) D. H. CULLER, *Clk.*

Fee, $1.00.

Cross-Interrogatories.

1st Cross-interrogatory. Did not B. B. Barnes make this deed to equalize his older with his younger set—that is, to equalize the older set of children with what had been secured otherwise to the younger set; that is, as the negroes that he acquired by his second marriage were secured by settlement to the younger children, was not this deed made to Andrew Barnes & the other older children so as to make them equal with the children of the last marriage?

2nd Cross-interrogatory. After this deed was made did not Andrew Barnes go into possession under that deed of the land & property mentioned in the deed & for himself and the other children named in the deed, and did he not remain in the possession of the property—
cultivating the lands, keeping the mills, [and] receiving the
387 tolls—until he went off to Texas without accounting or being in anywise liable to account for the same to B. B. Barnes, the maker of the deed, & only to the others named in the deed?

3rd Cross-interrogatory. When Andrew Barnes left this property & moved off to Texas did he not leave Wright in the possession of the property to control & account for the same—that is, for what he should receive on account of same—to said Andrew Barnes & the others to whom said deed was made, and after he gave up the property did not B. B. Barnes take possession of & use it as the father of the persons to whom the deed was made & hold & use it for their benefit?

4th Cross-interrogatory. State all you know that will make in favor of defendants.

R. F. LYON,
Def'ts' Att'y.

Acknowledgment of Service.

Due & legal services of the within interrogatories acknowledged. Copy & further service & notice waived. I consent that the answers
be taken without commission & nominate A. L. Miller on part
388 of defendants to act as commissioner to execute the same.

R. F. LYON,
Def'ts' Att'y.

Depositions of William G. Vinson.

In the District Court of the United States for the Southern District of Georgia.

In the Matter of BENJAMIN B. BARNES, Bankrupt.

WILLIAM E. COLLIER, Assignee,

vs.

ELIZA A. ADAMS, MOSES BARNES, JOHN BARNES, *et al.*

Petition by assignee to sell land, &c.

By virtue of an agreement of counsel for both parties in above cause, the undersigned commissioners have this day caused William G. Vinson, the witness in the original interrogatories named, to come before us at Fort Valley, Houston county, Georgia; being first duly sworn true answers to make to said interrogatories, the said witness answers as follows:

To 1st interrogatory: I have seen the original deed, of which a copy is annexed to the interrogatories. I wrote it at the
389 instance of Benj. B. Barnes. He was very sick at that time; very low. The circumstances attending the writing of the deed were as follows: He sent for me to write his will & assist him in settling his business; told me that his last set of children had some negro property settled upon them by Aden Hamilton, their grandfather; that he thought he could make both sets equal by giving the mill property to his first set of children. I advised him that if he wished to make it sure he had best make a deed to the mill property to his first set of children, & he assented. I then wrote the deed, of which a copy is annexed, & then wrote his will, & in the will made both sets equal as to the property described in the will. He had only two sets of children.

To the 2nd interrogatory: My recollection is that at the execution of the deed nothing was said about the possession of the property conveyed. I supposed Benj. B. Barnes would retain possession until his death. I cannot state positively who held possession after the making of the deed, but the facts are as follows: Andrew
390 Barnes was living at the mill when the deed was made, & had been for a year or two before the making of the deed. After the deed was made, & before also, I saw produce of various kinds going from the mill-farm & mill to Benj. B. Barnes' home. I then lived between the two places on the road leading from the mill place to B. B. Barnes' place; could not say who received the rents, &c., of the mill & mill-farm, except that I saw produce going therefrom to B. B. Barnes', as above stated. I lived about half way between the two places, & had no other means of knowing except my residence there.

To 3rd interrogatory: I do not remember the exact sum named in the deed. I saw no money or anything of value pass in the transaction, & heard none demanded. I think that B. B. Barnes

delivered the deed to A. J. Barnes with the mill & other papers at the time of executing the deed, but I am not positive; don't know how long he retained it in his possession, & do not know who caused the deed to be recorded. I saw no difference as to B. B. Barnes' possession of the mill-property between what occurred before
391 & after the making of the deed. Both before and after the making of the deed I saw some produce going from the mill & mill-farm to B. B. Barnes' home place, & know that he directed in keeping up the fences & repairing the mill. And these are all the facts in my knowledge that bear on the matter. As to his purposes concerning the possession of the land, I do not know any more than may be inferred from the facts I have stated. Nothing was said about it at the making of the deed. I don't know whether or not he turned over the possession any further than the facts I have stated; therefore can't answer about his reasons.

Answers to Cross-Interrogatories.

To 1st cross-interrogatory: The deed was to make his first set equal with his last—that is, to balance the mill property against the negro property settled on the last set.

To 2nd. cross-interrogatory: Andrew Barnes was living at the mill when the deed was made; he continued then attending to the mill and cultivating part of the land until he moved to Texas,
392 but for whose use or benefit he occupied it, or to whom he rendered account, I cannot say. He received the tolls as miller, but I cannot say whether he accounted to B. B. Barnes or to the others named in the deed.

To 3rd cross-interrogatory: When Andrew Barnes moved to Texas he left Josiah Wright at the mill & he had possession as miller, and he, perhaps, cultivated some of the land, but for whom he held possession & to whom he accounted I do not know. B. B. Barnes took possession when Wright left and employed millers & rented out the land, but whether he accounted to anybody, &, if so, to whom, I do not know.

W. G. VINSON.

Answered, sworn to, & subscribed before us at Fort Valley, Georgia, this February 16th, 1878.

W. E. BROWN, [L. S.]
Commissioner.
A. L. MILLER, [L. S.]
Commissioner.

Endorsement on Envelope Containing Foregoing Depositions.

In the matter of B. B. Barnes, bankrupt. District court
393 United States for southern district Georgia. Wm. E. Collier, assignee, *versus* Eliza A. Adams, -oses Barnes, —n Barnes, *et al.* Petition by assignee to sell lands, &c. Interrogatories. To the clerk district court U. S. for southern district Georgia, Savannah, Ga.

Signed across seal, W. E. Brown, com. (L. S.). A. L. Miller, com. (L. S.). I hereby certify that I received the within depositions from the hands of A. L. Miller, one of the commissioners, & that the same has been in my possession and unopened ever since the 22nd of March, 1878. James M. Jones. Sworn to before me [at] Savannah, November 27, 1878. W. P. Ward, clerk. Received from the hands of James M. Jones Nov. 27th, 1878. W. P. Ward, clerk. Opened by consent. R. F. Lyon, for def'ts. S. Hall, for respondent.

Interrogatories for Andrew J. Barnes.

In United States District Court, for Southern District of Georgia.

In the Matter of BENJAMIN B. BARNES, Bankrupt, & petition by James M. Jones, a creditor & assignee, to subject 708½ acres of land in 6th district of Crawford & Houston Co's.

394 Interrogatories to be exhibited to Andrew J. Barnes, residing in Johnson county, Texas, a material witness for the claimants to the land as against the claims of the assignee & creditors.

Interrogatory 1st. Look at the annexed copy deed and state what you know of the execution of the original deed, where it was made, & what was the consideration & inducement to the making of said deed.

Interrogatory 2nd. What relation are Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, Remillison Barnes, the grantees named in said deed, to Benjamin B. Barnes, the maker thereof?

Interrogatory 3rd. After the deed was made who took possession of said land? Under what right was such possession taken? Under whom & for whom did such person take & hold the possession of said lands & property described in said deed? If you say, in answer to the foregoing, that you took the possession of the same, describe the improvements on the said land, how long you held
395 them, what did you do with the income arising or received by you from said property, if any, & what was that income.

Interrogatory 4th. How long did you hold said property? Why did you give it up or quit the possession? To whom did you deliver the possession, & for whom was such person to hold the possession? What account was he to keep of rents, tolls, or to whom was he to render such account?

Interrogatory 5th. If the possession of said property ever went back into the possession or for the use of Benjamin B. Barnes, who made this deed, state by whose consent it was done, & why.

Interrogatory 6th. State whether it was by common consent of all the donees in the said deed to let old man Barnes have a life interest in it, or the benefit of it for life, or not, or why it was.

Interrogatory 7th. Where do the grantees in said deed now live? What property did Benjamin B. Barnes, the maker of this deed, have at the date of this deed, whether of land, negroes, or
396 other thing? Describe the same fully & particularly, giving value, &c., & state your means of knowing.

Interrogatory 8th. What did Benjamin B. Barnes owe at the date of this deed, & what was your means of knowing this?

Interrogatory 9th. State all you know that will make in favor of the *bona fides* of this deed.

R. F. LYON,
Att'y for Claimants to the Land under the Deed of 25 Sept., 1863.

Cross-Interrogatories.

1st Cross-interrogatory. Who had possession of the deed inquired about when you left Georgia in the winter of 1866? In whose possession had it been before that time? Who had it recorded in Crawford county?

2nd Cross-interrogatory. When you were about to leave Georgia for Texas did not James M. Jones have you under arrest under a *casa*, & did you not, in Fort Valley, on or about [the] 6th day of December, state to him that you had no property in Georgia,
397 & that if he would release your person you would give James Hardison as security for the debt? Did you not state to Josias R. Wright & William Thomas, one or both of them, in Crawford county, Ga., & when you were about leaving for Texas, that your object for removing was to get a settlement out of your father; that you could not do so if you remained?

3rd Cross-interrogatory. Who is present at the taking of your answers to these interrogatories?

SAMUIL HALL,
WILLIAM A. LOFTON,
Att'ys for Collier, Assignee, &c.

Depositions of Andrew J. Barnes.

THE STATE OF TEXAS, *Johnson County:*

Before me, Phil. T. Allin, a notary public of said county & State, this day appeared A. J. Barnes, to me well known, & who, after being duly sworn, in answer to the attached interrogatories, deposes & says:

To 1st interrogatory: I recognize the copy deed as being a *fact simile* of the one executed by the said Benjamin B. Barnes to
398 Moses Barnes, John Barnes, Benj. Barnes, Patience Lightfoot, A. J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, and Remillison Barnes, made in the year 1863 on the 25*rd* day of September. It was made to the above parties (grantees) as their part of the community property held by the said Benj. B. Barnes (the grantor), as received by him through his first wife, who was before marriage Patience Spears and was the said grantees' mother.

To 2nd interrogatory: They are his children.

To 3rd interrogatory: I, A. J. Barnes.

Under right of title and consent of all parties living in Georgia; those in Texas communication was cut off from in time of the war;

one corn-mill, one flouring-mill, one rice-mill, one set of wool cards and b-ilding that contained the same, all of which is worth two thousand dollars.

Two residences and one hundred and eighty acres of land in cultivation, I held them about three years; I paid some of it on debts that was hanging over said property, some for improvements,
399 some to the *bona fied-* purchasers of said place.

To 4th interrogatory: About three years; I gave it up because the purchasers were not satisfied with the way I managed it; I delivered it to Joseph R. Wright, and told him there wood be arrangements made in the future and to keep correct accounts.

To 5th interrogatory: If it ever went back it was not by consent of all the said purchasers.

To 6th interrogatory: It was not.

To 7th interrogatory: Moses Barnes, heirs of John Barnes, deceased, Benjamin B. Barnes, Jr., Patience Lightfoot, Sarah Vinson, & A. J. Barnes reside in this, Johnson, county, Texas, and the others in Georgia. He had fourteen negrows, six negrows community property with his present wife, fourteen hundred acres of land, besides the land described in deed. The fourteen negrows were wort six thousand dollars gold; the one-half interest in the six negrows was worth fifteen hundred; the land is worth six thousand dollars gold and twenty-five hundred dollars worth of
400 perishable property. My knowledge arose from being perfectly familiar or acquainted with his (the said Benj. B. Barnes') business.

To 8th interrogatory: He owed about one thousand dollars, provided he had not at the time bought the Beal negrows.

To 9th interrogatory: The net proceeds of the property in question for the last ten years, after all expenses being paid, is about fifteen hundred dollars gold, prior to the year one thousand eight hundred and sixty-six.

Answer- to Cross-Interrogatories.

To 1st cross-interrogatory: I do not know whose possession it had been in; my & W. G. Vinson's, who were executors of the will of Benjamin B. Barnes that was written and bears same date with deed; I don't know who had it recorded.

To 2nd cross-interrogatory: If he had me under arrest I did not know it. I did; having formerly transfer-ed my right to the land transfer-ed in said deed. I did not; if James Hardison went
401 my security he did it without my consent. I did made such *such* statement to parties, but it was a personal settlement, & not a settlement about the property in question.

To 3rd cross-interrogatory: In answer to the 3d cross-interrogatory, Andrew J. Barnes states that at the taking of the above & foregoing answers to the direct & cross interrogatories W. F. D. Barnett, J. R. Frotherston, & J. H. Kieth were present. The taking the answers to said interrogatories —.

A. J. BARNES.

STATE OF TEXAS, *Johnson County:*

I, Phil. T. Allin, a notary public in and for Johnson county, Texas, do hereby certify that the foregoing answers of A. J. Barnes, the witness before named, were made before me.

Answered, sworn to, & subscribed before me by the said witness.

Given under my hand and official seal this 6th day of January, A. D. 1877.

[Seal Notary Public, County of Johnson, Tex.]

PHIL. T. ALLIN,
Notary Public, Johnson Co., Texas.

402 STATE OF TEXAS, *County of Johnson:*

I, W. Poindexter, att'y-at-law at the town of Clerburne and said county of Johnson, and also nominated by the said Samuel Hall as commissioner to execute the above and foregoing interrogatories, do hereby certify that the foregoing answers of A. J. Barnes, the witness before named, were made before Phil. T. Allin and in my presents, and subscribed and sworn to before the said Phil. T. Allin, a notary public in & for said county of Johnson.

Given under my hand on this the 6th day of Jan., A. D. 1877.

W. POINDEXTER,
Att'y-at-Law, &c., Commissioner.

STATE OF TEXAS, *Johnson County:*

Before me, Jno. B. Hudson, clerk of the district court in and for said county, personally appeared Wm. Poindexter, who is to me personally known, and acknowledged that he signed, executed, and delivered the foregoing instrument of writing for the purposes and consideration therein specified.

Witness my official seal and signature, at my office in the
403 city of Clerburne, this 8th day of January, A. D. 1877.

[Seal [Dis]trict Court Texas.]

JNO. B. HUDSON,
Clerk D. C. J. Co., Tex.

Copy of Deed.

GEORGIA, *Crawford County:*

This indenture, made and entered into this the twenty-fifth day of Sept., in the year of our Lord eighteen hundred and sixty-three, between Benj. B. Barnes, of the county and State aforesaid, of the one part, and Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, of —— county, Texas; Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, Remillison Barnes, of the county and State aforesaid, of the other part, witnesseth: That I, the said Benj. B. Barnes, have, for and in consideration of the sum of ten thousand dollars to me in hand paid at and before the sealing of these presents (the receipt whereof is hereby acknowledged), granted, bargained, sold, and conveyed, and do

by these presents grant, bargain, sell, and convey, unto
404 them, the said Moses Barnes, John Barnes, Benjamin Barnes, Patience Lightfoot, A. J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, Remillison Barnes, a certain tract or parcel of land containing seven hundred eight and a half acres, be the same more or less, known and distinguished as lots No. 197 one hundred and ninety-seven, part of said lot lieing in Crawford and part in Houston county; fifty acres of lot No. 196, one hundred & ninety-six, northeast corner of said lot, Mossy creek being the line; one hundred acres, the west half of lot No. 219, two hundred and nineteen; lot No. 220, two hundred and twenty; the south half of lot No. 221, two hundred & twenty-one; fifty acres, more or less, of lot No. 231, two hundred and thirty-one, the branch being the southeast line, lieing in the northwest corner of said lot, and five acres up and down the creek of lot No. 196, one hundred & ninety-six; also water privileges on — No. (196) one hundred and ninety-six—said land lieing and being in the sixth district of Houston county, with the exception of the 50 acres of lot No. 196 and the northwest corner of lot No. 157, which are in the sixth dis-
405 trict of Crawford county; to have and to hold said bargained premises unto the said Moses Barnes, John Barnes, Benj. Barnes, Patience Lightfoot, Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams, & Remillison Barnes, their administrators, executors, heirs, & assigns, with all the rights, members, and appurtenances thereunto attached or in any manner belonging, to their only proper use, benefit, and behoof, forever. And the said Benj. B. Barnes, for himself, his administrators, executors, and assigns, will warrant and forever defend the right and title thereof against the claim of themselves or any other person or persons whatever.

In witness [whereof] the said Benj. B. Barnes hath hereunto set his hand and seal the day and year above written.

BENJ. B. BARNES. [L. S.]

Signed, sealed, & delivered in presence of—
D. G. JOHN.
W. G. VINSON.
J. D. HARTLY, *J. P.*

Acknowledgment of Service.

406 Due & legal service acknowledged, & we consent that the interrogatories be executed without a commission, and I nominate W. Poindexter, of the town of Clerburne, Johnston county, State of Texas, as commissioner to execute the same.

Dec'r 12, 1876.

SAMUEL HALL,
Att'y for Collier, Assignee.

Endorsements: In the United States district court for southern district of Georgia. In the matter of Benj. B. Barnes, bankrupt, & petition to condemn lands. Interrogatories for Andrew J. Barnes.

Saving exceptions to the relevancy & legability of the answers I hereby waive all objections to the execution of these interrogatories & consent that they be used as though the answers had been formally & regularly taken. 30 Jan'y, 1877. S. Hall, counsel for Collier, assignee.

Endorsements on Envelope Containing Foregoing Depositions.

W. E. Collier, assignee, *versus* Eliza Adams *et al.* Depositions of A. J. Barnes. Received this package from the hands of W. Poindexter, the officer before whom the enclosed depositions were
407 taken, and this package is forwarded by due course of mail. S. N. Clark, P. M., to W. P. Ward, Clerburne, Tex., clerk of the 5th court of U. S. for the southern district of Georgia. Savannah, Ga. Received this package from the hands of the postmaster, at Savannah, on the 3d day of April, 1880. W. P. Ward, clerk. Signed across seal, W. Poindexter, commissioner, (L. S.) Leave to open 10 May, 1881. J. Erskine, judge.

Petition to be Put in Possession of Property, &c.

Lyon & Gresham, attorneys-at-law.

MACON, GA., 1 *Dec'r*, 1879.

DEAR SIR: Present the enclosed petition & order to Judge Erskine so soon as it comes to your hands, & after putting the order on the minutes return it—the original—by to-morrow evening's mail, so that I can serve it in time. Send to Lyons & Gresham, Oglethorpe, Geo.

Yours, &c., R. F. LYON.

Cl'k U. S. court, Savannah.

408 I enclose ten dollars (10.00) as advance on costs. Please acknowledge receipt of same.

R. F. LYON,
By T. B. GRESHAM.

UNITED STATES OF AMERICA:

In the District Court of the U. S. for the Southern District of Georgia.

To the judge of said court:

The petition of Moses Barnes, John Barnes, Benjamin ——, Andrew J. Barnes, Patience Lightfoot, Sarah Vinson, of the State of Texas, Martha Cowart, Eliza A. Adams, wife of John D. Adams, and Remillison Adams, of said State of Georgia, showeth unto your honors that they are all the children of Benjamin B. Barnes, of the county of Crawford, in the southern district of said State, and now an adjudged bankrupt in said court, by his first wife, by whom & in whose right the said Benjamin B. Barnes received or inherited considerable property; that on the twenty-fifth day of Sept., in the year eighteen hundred & sixty-three, the mother of petitioners then being dead & the said Benjamin B. Barnes having intermarried a second
409 wife, who was entitled in her own right to some property in slaves, being possessed of a large amount of real and personal

estate, consisting of lands, negroes, farms well stocked with cows mules, vehicles, & all necessary machinery for farming successfully & profitably farms on the same, in the counties of Crawford and Houston, in the said southern district of Georgia—one of his farms or plantations known as his home place, on which he resided, containing some 1,200, twelve hundred, acres of land or more, of the value of twelve thousand dollars in good money; another place on which was a good & valuable farm in active operation on the line of Houston & Crawford counties, in the said southern district of Georgia, & on which there was about seven hundred acres of land & of the value of about four thousand ($4,000.00) dollars, having reference to lands, mills, & improvements on the same; the negro property of the said Barnes at that time being worth some ten or fifteen thousand dollars, estimating by their value before the war; the other property of said Barnes consisting of plough stock, mules, horses, cattle, hogs, sheep, &
410 other personal property, being of the value of about three thousand dollars, the said Barnes being then a most prosperous, well-to-do, & successful farmer—at that time the said Barnes owed a debt to James M. Jones, then & now of the county of Bibb, in said southern district of Georgia, of three or four thousand dollars for the purchase of slaves, and at that time his property was equally valuable as at the time when he bought & made said deed for them; besides this the said Barnes was comparatively free of debt, not owing outside of & beyond it in all more than three hundred dollars; so that the property of the said Barnes at that time was sufficient to pay the said debt due the said Jones as aforesaid & all other debts three or four times over. The said Barnes being so possessed of said property as his own, & owing only the debts aforesaid, & being desirous to make an advancement or settlement on petitioners, as the children of his first wife, that would be suitable to them, his condition, fortune, & their necessity, & having
411 reference to what his indebtedness was at the time, as before stated, & the right and claim of the balance of his family, including his then wife & the offspring of that marriage, to equal alike suitable provision & his own support, on the said 25 day of September, in the year 1863, for the above reasons, and to equalize petitioners with his then wife & the offspring of that marriage with what they would have & be entitled to out of the balance of his estate, & that which his then wife owned & held in her own right, after the payment of all his debts in the best of faith, & with no intent to hinder, delay, or defeat any of the said or any future creditors, conveyed by deed to your petitioners the plantation & mills on the line of Crawford & Houston counties, as aforesaid, containing seven hundred & eight & a half acres, known and designated as lots Nos. (197) [one] hundred and ninety-seven, part of said lot being in Crawford county and part in Houston county; fifty acres off of lot one hundred and ninety-six (196), the northeast corner of said lot, Mossy creek being the line; one hundred acres, the west half of lot (219) two hundred and
412 nineteen; lot [two] hundred and twenty (220); the south

half of lot No. (221) two hundred and twenty-one; fifty acres, more or less, of lot No. (231) two hundred & thirty-one, the branch being the southeast line, lying in the northeast corner of said lot, and five (5) acres up and down the creek of lot (196) one hundred and ninety-six; also water privileges on said lot No. one hundred and ninety-six, 196, all of said land being in the sixth (6th) district of Houston county, with the exception of the fifty acres off of lot (196) one hundred and ninety-six and the southwest corner of 157, which are in the sixth district of Crawford county, which said deed was made, executed, and delivered to your petitioners for the purpose and consideration aforesaid, & also because the said Benjamin B. Barnes had received that much & far more property by his intermarriage with the mother of petitioners, & he felt & so acted that it was but right, natural, & equitable & just that he should at least secure that much to her and his offspring, your petitioners,
413 when he could do so without any injustice to his creditors or the balance of his family, as he in fact left enough in his hands, possession, control, & use as his own property after this conveyance to pay all his debts several times over & then have enough over for his own & the balance of the family's comfortable support & maintenance the balance of his & their lives; a copy of which said deed is hereto attached. And having so executed said deed, one of petitioners, to wit, Andrew J. Barnes, for himself & the balance of petitioners, took possession of said property so conveyed in said deed and continued to manage & use it for their common benefit until the year 18—, accounting to petitioners for the rent, giving in and paying taxes, & insuring the mill property, & in every way treating & using it as his & petitioners' property, and not that of the said Benjamin B. Barnes, as in fact & in truth it was until the year 186–, when the said Andrew J. Barnes made up his mind to & did actually quit said lands & move to the State of Texas, & when he did so he put one Josiah Wright in the possession
414 of the said conveyed premises to hold for himself & the balance of petitioners on rental for one year for one-third of the nett profits of the said mills. At the end of that year the said Josiah Wright surrendered the possession of said property to the said Benjamin B. Barnes, the father of the petitioners, & the said Benjamin B. Barnes having so acquired said possession continued to hold & use it until the year 1873 or '4, when the said Benjamin B. Barnes, on account of domestic troubles, bad habits into which he had fallen seriously injuring his reason & mind, bad & improper advice, was induced to apply for & be adjudged a voluntary bankrupt when there was no earthly necessity for it, as his estate was far in excess of all his debts, including that of the said James M. Jones, & from the same improper influences & advice that induced him to apply for the benefits of the bankrupt laws he included in his schedule the lands of your petitioners, as aforesaid, when he had no right or cause whatever to do so, & when in fact it was not his property, not held as his own, but was the property of peti-
415 tioners & held by him for them. Petitioners show that the estate of said Benjamin B. Barnes when he applied for the

benefit of the said bankrupt laws consisted of his home place of 1,200 acres of land, other lands described in his schedule, & personalty, all of the value of ten thousand dollars, & far in *access* of all the debts he owed at that time.

That William E. Collier, of the county of Houston, in said southern district, was appointed assignee of said bankrupt estate & entered into the possession & control of the same, including the lands & premises of your petitioners; that he had sold all of said property except that of petitioners' & a lot of land in Terrell county claimed by Mrs. Smith, another daughter of said bankrupt by his last wife, & he realized from the said sale some 7 or $8,000, nearly enough to pay off all of said debts, but a large amount of said sales have been exhausted in the payment of expenses & counsel fees, the counsel fees amounting to as much as $900, nine hundred dollars, if not more, & other expenses in somewhat like proportions.

These expenses were extraordinary & improper, but
416 were all approved, agreed to, & allowed by the creditors of whom the said James M. Jones was the principal; besides this five hundred acres of the homestead, embracing the dwelling & the very best & most valuable part of the plantation, & without which the balance of the plantation was of but little value compared with its value as a whole; also five mules and the household & kitchen furniture, cattle, carriages, as a homestead; to all of which the creditors consented & acquiesced; and all of which when added to the assets actually received by the assignee or the money received by him other than the property of petitioners was & is far in excess of all the debts of the said bankrupt, showing most conclusively that the conveyance made by said bankrupt in 1863 was not in fraud of his creditors at that time, & did not so operate at the end of the war after the emancipation & loss of his slave property, including those for which said debt was contracted, nor at the time of said application & adjudication in bankruptcy, but that there was still

enough to pay all his debts, & that his inability or the failure
417 of assets to pay the said Jones & all other debts grew exclusively out of causes that did not exist at the execution of said conveyance, but grew up subsequently & without reference to or any dependence on causes or facts existing at that time, thus demonstrating that the conveyance to orators was a valid one, untainted with any fraud or suspicion of fraud that could possibly taint or impair it in any sense whatever, & that the property in said conveyance contained did not pass to the assignee, or any interest in or claim in it whatever, but the same was the property of your petitioners & not the subject of administration by the said Collier as assignee, as aforesaid, *as* the assets of the said bankrupt. But nevertheless the said William E. Collier, as the assignee of the said Benjamin B. Barnes, did, immediately upon his appointment as assignee as aforesaid, & the assignment of the assets of said bankrupt to him as aforesaid, & under color thereof, to wit, in —— the year 187—, ——, *did* enter in & take possession of said lands & property of your petitioners in said conveyance con-
418 tained, & has continued in possession of the same from

that time to the present, & is still in the possession & control of the same as said assignee, all the time receiving as such assignee the annual rents & profits of the same, all of which is unknown to your petitioners, but which they assert to be of the annual value of five hundred dollars or some such sum. Petitioners show that the said Collier in the year 1876 applied to this honorable court by petition for leave to sell said land for the benefit of the bankrupt's estate, to which petitioners were made parties defendant & duly served therewith, to which they came in & showed for cause, & so they were at issue on the same from the year 1876 down to the present term of said court, evidence being taken on both sides & in court to show the whole of said cause, when said Collier, [by] his counsel, capriciously withdrew his said petition without the consent of your petitioners and without any adjudication by this honorable court of the issues made therein, although petitioners were present in court,
& had been for term after term for a series of terms asking,
419 demanding, & urging a trial of the same, so that the title might be settled & this cloud on it removed & petitioners restored to the full enjoyment & use of their said property.

Your petitioners therefore pray your honor to direct the said Collier, who is but the officer of the law in the premises & within the control & direction of this honorable court having especial jurisdiction of this & all like questions, to put your petitioners in the possession of said property & to account to your petitioners for all the rents he has received from said property, &, as your petitioners do not know what the rents amount to that he has received, that he render to your honors an account of the same, and petitioners will ever pray, &c.

R. F. LYON,
Petitioners' Atto.

GEORGIA, *Macon County:*

Personally appeared John D. Adams, of said county, the husband of one of the petitioners, to wit, Eliza A. Adams, & the agent and
attorney-in-fact for all the other petitioners except Mrs.
420 Cowart, & who, being sworn, says that the facts set forth & contained in the foregoing petition are true.

JOHN D. ADAMS.

Sworn to & subscribed before me this 1st Dec'r, 1879.

ALF. GREEN,
N. P. & ex-off. J. P.

Order.

In the District Court of the United States for the Southern District of Georgia.

Upon hearing the foregoing petition & consideration thereof, it is ordered that William E. Collier, assignee of Benjamin B. Barnes, bankrupt, show cause before me on Monday the 8th day of December, instant, in court, at Savannah, in the southern district of Georgia, why the above petition should not be granted.

It is further ordered that said Collier be served with a copy of this petition & order.

Done in open court this the 3d day of December, 1879—10 a. m.

J. ERSKINE.
Dist. Judge.

Filed Dec. 3, 1879.

WM. M. HEYWARD, *Dep. Cl'k.*

421 *Acknowledgment of Service.*

Service acknowledged as of this day by receipt of copy, 4 Dec'r, 1879.

SAMUEL HALL,
Att'y for Collier, Assignee.

Endorsements: In United States district court, Savannah, Georgia, southern district of Georgia. Eliza A. Adams *et al. versus* Wm. E. Collier, assignee — B. B. Barnes. Petition, &c., to be put in possession of property, &c. Original filed Dec. 2, 1879. W. M. Heyward, deputy clerk.

Demurrer to Petition.

In the District Court of the United States for the Southern District of Georgia.

ELIZA A. ADAMS *et al.*

vs.

WILLIAM E. COLLIER, Assignee of Benjamin B. Barnes, Bankrupt.

Petition & order calling upon assignee to show cause why he should not turn over to petitioners lands, &c.

422 And now comes the respondent, William E. Collier, assignee of said Benjamin B. Barnes, bankrupt, by his counsel, Samuel Hall & Andrew Sloan, & for cause why he should not comply with the prayer of said petition doth demur to the same, & for cause of demurrer says that this honorable court hath not jurisdiction or power in such form of proceeding to grant the prayer of said petitioners, or the relief asked thereby. All which he submits to this honorable court, & prays the judgment thereof whether he shall make other or further answer to the same.

SAMUEL HALL,
ANDREW SLOAN,
Atty's for Respondents.

Endorsements: In United States district court, southern district Georgia, Savannah. Eliza A. Adams *et al. versus* Wm. E. Collier, assignee, &c. Demurrer to petition. Filed Dec. 9, 1879. W. P. Ward, clerk.

423 *Petition by Debtor and Schedules A & B.*

In Bankruptcy.

DAWSON, GA., *March 31st, A. D.* 1874.

DEAR SIR: This case was sent me with request that I forward and ask that the case be refer-ed to me as soon as possible, as and injunction will likely be asked for in a few days. I do so, and enclose you $35 for Clark & Marshal, and hold $50.00 subject to your order, as heretofore. Please send me 1 quire assignments, & oblige. I will come to Savannah as soon as I can and make some arrangement about blanks, as you suggest. All well. No news, save that Harper died last Friday.

Yours very truly, S. WISE PARKER,
Register in Bankruptcy.

James McPherson, Esqr., clerk U. S. court, Savannah, Ga.

424 *Petition of Debtor.*

To the Honorable John Erskine, judge of the district court of the United States for the southern district of Georgia:

The petition of Benjamin B. Barnes, of Fort Valley, E. M., the county of Crawford and State of Georgia and district aforesaid, respectfully represents that he has resided and done business for six months next immediately preceding the filing of this petition in Crawford county, within said judicial district; that he owes debts exceeding the amount of three hundred dollars, and is unable to pay all the same in full; that he is willing to surrender all his estate and effects for the benefit of his creditors, and desires to obtain the benefit of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

That the schedule hereunto annexed, marked A, and verified by your petitioner's oath, contains a full and true statement of all his debts and (so far as it is possible to ascertain) the names and places of residence of his creditors and such further statements concerning said debts as are required by the provisions of said act.

That the schedule hereunto annexed, marked B, and verified by your petitioner's oath, contains an accurate inventory of all his estate, both real and personal, assignable under the provisions of said act.

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said act, and that he may be decreed to have a certificate of discharge from all his debts provable under the same.

B. B. BARNES.

UNITED STATES OF AMERICA,
Southern District of Georgia, } ss:

I, Benjamin B. Barnes, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief; and I do further make oath that I am a citizen of the United States of America, and that I will bear true faith and allegiance to the same.

B. B. BARNES, *Petitioner.*

Subscribed and sworn to before me this 27th day of March, A. D. 1874.

{ Seal Joel R. Griffin, U. S. Commissioner, Southern District of Georgia. }

JOEL R. GRIFFIN,
U. S. Commissioner.

425 SCHEDULE A 1.—(As approved.)

In the Matter of —— ——, Bankrupt.

Statement of All Creditors Who Are to be Paid in Full, or to Whom Priority is Secured.

Order of payment, preferred claims.—1st. Debts due the United States, and taxes and assessments under the laws thereof. 2d. Debts due to the State of ——, and taxes and assessments under the laws of said State. 3d. Wages due clerks or servants, &c., under class fourth, section 28, to an amount not exceeding $50, for labor performed, within six months. 4th. Other debts preferred by said act.

Reference to ledger or voucher.	Names of creditors.	Residences and occupation of creditors.	Amount.		When and where contracted.	Nature and consideration of the debt, and whether contracted as copartner or joint contractor; and, if so, with whom.
			Dollars.	Cts.		
	L. D. Evens	Fort Valley, Ga.; miller	50	00	1874, in Crawford county, Georgia.	Service for tending mill for 1874.

B. B. BARNES, *Petitioner.*

426 SCHEDULE A 2.—(As approved.)

In the Matter of BENJAMIN B. BARNES, Bankrupt.

Creditors Holding Securities.

N. B.—Particulars of securities held, with dates of same, and when given are to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the 11th section of the act, and whether contracted as copartner or joint contractor with any other person; and, if so, with whom.

Names of creditors.	Residence and description.	When and where contracted.	Value of security.		Amount of debts.	
			$	*cts.*	$	*cts.*
	None.					

B. B. BARNES, *Petitioner.*

SCHEDULE A 3.

Creditors Whose Claims are Unsecured.

In the Matter of BENJAMIN B. BARNES, Bankrupt.

Names of creditors.	Residences and occupations.	Amount.	When and where contracted.	Nature and consideration of debt, &c.
		$. *Cts.*		
James M. Jones	Macon, Ga.; broker	4,700 00	1860; in Macon Co., Ga.	For negroes purchased at an estate sale of Maj. Beal, James M. Jones being administrator. Judgment on comp't in Crawford — superior c't, about 1870.
L. G. Evans	Macon, Ga.; farmer	110 00	1874; Crawford Co.	
Gord & Small	Macon, Ga.; merchant	200 00	1873; in Macon, Ga.	For merchandize. In suit, 6th dist.
Hardeman & Sparks	Macon, Ga.; cotton factors	160 00	1873; in Macon, Ga.	For money I endorsed for J. B. Smith.
Mary P. Barnes	Crawford Co., Ga.; lady	2,000 00	1856; in Crawford Co.	For use of her slaves as a seperate estate; property & proceeds of its labor to be hers by a special writing of her father.
Aden H. Barnes	Crawford Co., Ga.; farmer	500 00	1869 to 1873; Crawford Co.	For services as superintending business as farmer.
Charles D. Anderson, ag't	Fort Valley, Ga.; cotton factor	24 75	1874; in Fort Valley, Ga.	For guano purchased of him as ag't
James Taylor	Fort Valley, " farmer, etc.	85 00	1873; in Crawford Co.	For merchandize.
Elijah Smith	Fort Valley, " farmer	4 00	1874; in Houston Co.	For forage—oats.
John A. Houser & Co.	Fort Valley, " merchant	8 00	1873; in Fort Valley	For bagging, etc.
Thos. J. Evans	Fort Valley, " merchant	52 83	1873; in Fort Valley	For merchandize.
W. Benswanger	Fort Valley, " merchant	25 00	1873; in Fort Valley	For merchandize.
Dr. W. C. Jones	Fort Valley, " physician	3 00	1873; in Crawford Co.	For services as a doctor.
Sam'l Hall	Fort Valley, " lawyer	200 00	1872; in Fort Valley	For services rendered as attorney.
Osborne D. Miller & Co.	Fort Valley, " manufacturer	5 00	1873; in Fort Valley	For repairs on carriage, etc.
L. S. Evans	Fort Valley, " miller	100 00	1874; in Crawford	For milling.

B. B. BARNES, *Petitioner.*

428 SCHEDULE A 4.—(As approved.)—In the Matter of BENJAMIN B. BARNES, Bankrupt.

Liabilities on Bills Discounted Which Ought to be Paid by the Acceptors.

N. B.—The dates of the bills or notes, and when due, with the names, residences, and business or occupation of the makers or drawers and acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known the names of the last holder known to the petitioner should be stated, and his business and place of residence. Same particulars as to notes on which petitioner is liable as endorser.

Ref'ce to ledger or voucher.	Names of holders as far as known.	Place of residence and occupation.	When and where contracted.	Amount.		Nature of liability, whether same was contracted as copartner or joint contractor, or with any other person; and, if so, with whom.
				Dollars.	Cts.	
		None.				

B. B. BARNES, *Petitioner.*

429 SCHEDULE A 5.—As approved.—In the Matter of BENJAMIN B. BARNES, Bankrupt.

Accommodation Paper.

N. B.—The dates of notes or bills, and when due, with the names, residences, and business or occupation of the makers or drawers and acceptors thereof, are to be set forth under the names of the holders; if the bankrupt be liable as maker, drawer, acceptor, or endorser thereof it is to be stated accordingly. If the names of the holders are not known the names of the last holder known to the petitioner should be stated, with his business and place or residence. Same particulars as to other commercial paper.

Reference to ledger or voucher.	Names of holders.	Residences of holders and particulars of bills, &c.	Name of maker, endorser, or acceptor.	Place where contracted.	Amount.		Whether liability was contracted as copartner or joint contractor, or with any other person; and, if so, with whom.
					Dollars.	Cents.	
			None.				

B. B. BARNES, *Petitioner.*

430 UNITED STATES OF AMERICA, } ss:
District of Georgia, }

On this twenty-seventh day of March, A. D. 1874, before me personally came Benjamin B. Barnes, the person mentioned in and who subscribed to the foregoing petition and schedule, marked A, respectively, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his debts, &c., in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

B. B. BARNES.

I certify that the foregoing petition and schedules are correct in form.

{ Seal Joel R. Griffin, U. S. Commissioner, }
{ Southern District of Georgia. }

JOEL R. GRIFFIN,
U. S. Commissioner.

SCHEDULE B 1.—As approved.

In the Matter of BENJAMIN B. BARNES, Bankrupt.

Interest in Lands.

Statement of all real and personal estate and effects whatever which are now in the possession, enjoyment, or under the control of the petitioner, or which are held by any other person in trust for his use or to the possession or enjoyment of which he is entitled at the date of filing petition.

Particular description of all real estate owned by petitioner, or held by him, and whether under contract or lease.	Encumbrances thereon, if any, and dates thereof.	Statement of all particulars relating thereto.	Estimated value.	
			Dollars.	Cents.
"*Home Place.*" Lot of land, No. 155, containing 202½ acres, more or less, all cleared, and has dwelling and other improvements on it; lot of land, No. 154, containing 202½ acres, more or less, about half cleared; lot of land, No. 156, containing 202½ acres, more or less, all timbered with pine; lot of land, No. 134, containing 200 acres, mostly timbered, having 60 acres cleared; 100 acres of southern half lot of land, No. 133, and 50 acres of the southwest corner of lot of land, No. 135. The whole amounting to 957½ acres, more or less; all in the 6th district of Crawford Co.	No encumbrances, except as set forth in Schedule A 3, by judgement lien of James M. Jones and others.	This land is like most of the uplands of Crawford Co., thin, and has been covered with pine. Since labor has left this and adjoining county it is but little sought after for farming purposes. Land valued at $4.00 per acre.	3,828	00
"*Mill Place.*" Lot of land, No. 197, containing 202½ —, more or less, sixty acres of which *is* cleared; lot of land, No. 220, containing 202½ acres, more or less, thinly timbered, 10 acres cleared; west half of lot 219, containing 100 acres, more or less, very poor; sixty acres off the east half of lot No. 196, not timbered and uncultivated; 50 acres of- west side of No. 23, uncultivated, scrubby oak.	None but as above set forth & as explained further on in duplicat- sheet, Schedule B 1.	This land is further explained, is mostly covered with water, and is worn & washed about the mill pond.		

Schedule B 1—Continued.

Particular description of all real estate owned by petitioner, or held by him, and whether under contract or lease.	Encumbrances thereon, if any, and dates thereof.	Statement of all particulars relating thereto.	Estimated value. Dollars.	Cents.
432 *Lands of "Mill Place" continued.* One hundred acres off of south half of lot of land No. 221, about 15 acres in cultivation, rest timbered with pine; lot of land, No. 228, containing 202½ acres, more or less, known as the Kelly lot, about 20 acres under cultivation, rest timbered with pine; five acres off of lot No. 196 and off of the south side—land is covered with water; containing in all 912½ acres, in 6th district of Georgia.	Only by leave of such judgment obtained years back, as set forth in Schedule A 3, by James M. Jones, of Macon, Ga., for the purchase money of slaves, as best can be remembered — purchase- in 1860.	This land as described on this sheet is the one on which is located a small grist-mill seat, & at one time was in good condition, but now run down; improvements rotten, land very poor, and necessarily covered with water. Land valued at $5.00 per acre.	4,562	50
"*Ledingham Place.*" Lot of land, No. 194, containing 202½ acres, more or less, most of it open and poor and thin, 150 acres in cultivation; one hundred acres off of lot of land No. 191; most of this is open, and 15 acres in cultivation. In the 6th district of Crawford Co. In all, 302½ acres.	This might be considered as above, having no encumbrances but as set forth above.	This land is very thin pine land, much of which labor will not live on, as land is so poor, and valued at $4.00 per acre.	1,210	00
One town lot in city of Fort Valley, known as part of lot No. 19, it being 24 feet clear across the lot by broadside to Armory hall.	This lot is claimed by Mr. D. H. Houser, as in controversy, Mr. Houser being in possession.	This *latrif* of land is not in possession of petitioner, but has owned it some time.	1,000	00
5th. One lot of land, No. 235, containing 202½ acres; in the 11th district of Terrell county; all timbered.	None more than above ----------	This is a wire-grass piece of land; valued at—	510	00

B. B. BARNES, *Petitioner.*

433 (As approved.)

SCHEDULE B 2.—(Inventory.)

In the Matter of BENJAMIN B. BARNES, Bankrupt.

Personal Property.

L.—Goods or personal property of any other description, with the place where each is situated.

Currency valuation:

1st. Household & kitchen furniture, consisting of two beds, lot of bedding, 6 chairs, 2 wardrobes, 2 tables, 1 wash-stand, 6 potware and crockery ware	$50 00
2nd. Clothing for himself and wife	30 00
3rd. One hundred pounds bacon, $10.00; poultry, $5.00	15 00
4th. Five cows and five calves and 6 yearlings, valued at $5.00 each	80 00
5th. One yoke of oxen and ox cart (included)	50 00
6th. One sow and pigs (eight in number), worth $14.00	14 00
7th. Ten shoat of all sizes, $2.00 per head	20 00
8th. Ten head of mules all told—, first one black mare mule named Kitt, aged 19 years, valued $70.00; one black mare mule (one-eyed) named Rhody, aged 17 years, valued at $40.00; one black mare mule Fannie, aged 13 years, valued at $40.00; one sorrel mare mule named Jane, aged 15 years, valued $40.00; one black horse mule, aged 10 years, valued $80.00, named Prince; one black horse mule named George, 8 years old, valued at $80.00; one black horse mule named Bill, aged 20 years, valued at $40.00; one sorrel horse mule named Tobe, 16 years old, valued at $30.00; one bay mule named Scoot, 10 years old, valued at $50.00; one sorrel horse mule name-Babe, aged 10 years, value $50.00	520 00
9th. Two fore-horse wagons with wooden axles, 8 years old, much worn, and valued at $15.00 apiece	30 00
10th. One carriage and harness, $50.00; 1 rockaway, $25.00	75 00
11th. Old running gear, $50.00; one McComack reaper, $5.00	55 00
12th. One thrash-, $15.00; one fan — chaffing corn, $5.00	20 00
13th. One corn-sheller, $2.50; one set of blacksmith tools, $2.50	5 00
14th. One carding-machine, $40.00; one set mill-rock, $10.00	50 00
15. One still, valued at $40.00 (125 gallons)	40 00
16th. Some sets of plan tools, much worn, $20.00; 1 gin and belt, $35.00	55 00

B. B. BARNES, *Petitioner.*

(As approved.)

SCHEDULE B 3.—(Inventory.)

In the Matter of BENJAMIN B. BARNES, Bankrupt.

Choses in Action.

B.—Stocks in incorporated companies and interest in joint stock companies.

1st. One note drawn by J. R. Smith and made payable to Benjamin B. Barnes, or bearer, in year 1873, for------- $425 00
2nd. One note drawn by Branham & King, secured by James A Miller, payable to B. B. Barnes, or bearer, in year 1869, for---------- 500 00

B. B. BARNES, *Petitioner.*

(As approved.)

435 SCHEDULE B 4.—(Inventory.)

In the Matter of BENJAMIN B. BARNES, Bankrupt.

Property in reversion, remainder, or expectancy, including property held in trust for — or subject to any power or right to dispose of or to charge.

N. B.—A particular description must be entered. If all or any of the debtor's property has been conveyd by deed of assignment or otherwise for the benefit of creditors the date of such deed should be stated, the name and address of the person to whom the property was conveyed, and the amount realized from the proceeds thereof, and the disposal of the same so far as known to the petitioner.

E.—Property heretofore conveyed for benefit of creditors.

1. One mule given by a freedman for a balance due after settlement was sold to another for $78.00, or if unable to pay for it at the end of the year to return the mule and pay him for it $25.00

B. B. BARNES, *Petitioner.*

436 SCHEDULE B 5.—(As approved.)

In the Matter of BENJAMIN B. BARNES, Bankrupt.

A particular statement of the property claimed as excepted from the operation of said act by the provisions of the 14th section thereof, giving each item of property and its valuation; and, if any portion of it is real estate, its location, description, and present use.

	Cur-ency Valuation.	Valuation. Doll's. Cts.
1st.	Household & kitchen furniture, consisting of 2 beds, lot of bedding to suit, 6 chairs, 2 wardrobes, 2 tables, 1 washstand, 6 pieces pot ware & one set crockery ware—common	$50 00
2nd.	Clothing for himself & wife	30 00
3rd.	100 lbs. bacon, valued at $10.00; poultry, $5.00	15 00
4th.	Five cows & five calves & 6 yearlings, valued at $5.00 each	80 00
5th.	1 yoke of oxen, with the cart, $50.00; 10 shoats of all sizes, $20	70 00
6th.	2 sows & 8 pigs (male), $14.00; 7 set plow gear & tools, 20	34 00
7th.	1 rockaway 15 years old, much worn, valued at $25.00	25 00
8th.	1 mare mule named Kitt, black color, aged 19 years, valued	70 00
9th.	1 black horse mule, named Prince, 10 y'rs, valued at	80 00
10th.	1 gin 10 y'rs old (much worn) with the belt, valued at	35 00
		$489 00

Claims the beneath not assignable under the constitution of Georgia, article VII, clause I, and statutes of Georgia of 1868, laying off and setting apart a homestead in realty of $200.00 and personalty of $1,000.00 in specie.

1st.	Lot of land, No. 155, containing 202½ acres, more or less, all cleared, and has the dwelling, improvements and out-houses of homestead. Lot of land, No. 154, containing 202½, more or less, about half cleared; rest covered with pine timber. Lot of land, No. 134, containing 183 acres of land; mostly timbered with pine. This whole body of land valued in gold at $3.40 per acre	2,000 00
		$2,000 00

2nd.	1 thrash for about $13.75; one fan for chaffing corn, $4.25	18 00
	1 buggy, a part (old iron), $4.25; one McCormack reaper, $42.50	46 75
	1 set of blacksmith tools (in part), 1 old corn-sheller, $5.00	5 00
	1 still (125 gal's), valued at $35.00; 1 carriage & harness, $42.50	77 50
	1 black mare mule, Rhody, valued at $40.00; one black mare mule, named Fannie, at $40.00; one sorrel mare mule, named Jane, valued at $40.00; black horse mule, George, $80.00; a black horse mule named Bill, $40.00; a sorrel horse mule, named Tobe, valued at $30.00; a black bay mule, Scott, $50.00; a sorrel horse mule, named Babe, $50.00; two 2 horse wagons, value $30.00	400 00
		547 25

B. B. BARNES, *Petitioner.*

437 (As approved.)

SCHEDULE B 6.—(Inventory.)

In the Matter of BENJAMIN B. BARNES, Bankrupt.

A true list of all books, papers, deeds, and writings relating to — trade business, dealings, estate, and effects, or any part thereof, which, at the date of the petition, are in — possession or under — custody and control, or which are in the possession or custody of —— —— in trust for —— or for — use, benefit, or advantage; and also of all others which have been heretofore, at any time, in — possession, or under — custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for the custody of the same.

The deed to lands as described in Schedule B 1.

B. B. BARNES, *Petitioner.*

438 UNITED STATES OF AMERICA, *District of Georgia,* } *ss:*

On this twenty-seventh day of March, A. D. 187–, before me personally came Benjamin B. Barnes, the person mentioned in and who subscribed to the foregoing petition and schedule, marked B, respectively, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his estates, both real and personal, in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

B. B. BARNES.

I certify that the foregoing petition and schedules are correct in form.

[Seal Joel R. Griffin, U. S. Commissioner, Southern District of Georgia.]

JOEL R. GRIFFIN,
U. S. Commissioner.

Entry on Back of Papers.

$85.

Referred to S. W. Parker, register, by special order of the court on the petition of the bankrupt.

439 Endorsement: No 1113. District court of the United States, southern district of Georgia. In bankruptcy. In the matter of Benjamin B. Barnes, Fort Valley, Georgia. A petition for adjudication in bankruptcy of himself. Original petition by debtor and Schedules "A" and "B" thereunder. Filed in the office of the clerk of the southern district of Georgia this 2d day of April, 1874, at 10 o'clock a. m. Jas. McPherson, clerk.

440 UNITED STATES OF AMERICA, }
Western Division, Southern District, of Georgia, } *ss:*

I, H. H. King, clerk of the circuit court of the United States of America for the 5th circuit and southern district of Georgia, do hereby certify that the foregoing is a true and complete transcript of the record and copy of all evidence used in the cause of William E. Collier, assignee of Benj. B. Barnes, bankrupt, complainant, against Moses Barnes, Eliza Adams, and others, respondents, lately pending in the said circuit court for the western division of the southern district of Georgia, and appealed by the respondents to the Supreme Court of the United States, as will appear from said record.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Macon, in said western division of the southern district of Georgia, this 31st day of December, A. D. 1883, and the Independence of the United States [the] one hundred and eighth.

[Seal of U. S. Circuit Court, Georgia.]

H. H. KING, *Clerk.*

Endorsed on cover: S. Georgia, C. C. U. S. No. 238. Eliza Adams, John D. Adams, Remillison Adams, Andrew J. Barnes, Moses Barnes, Benjamin Barnes, Sarah Vinson, Benson Barnes, Mattie Shropshire, Patience Lightfoot, and Martha Hardy, appellants, *vs.* William E. Collier, assignee of Benjamin B. Barnes, a bankrupt. Filed 22d March, 1884.

122-382

IN THE SUPREME COURT OF THE UNITED STATES.

Eliza Adams et al., Appellants,

VS.

W. E. Collier, Assignee of B. B. Barnes,

Bankrupt, Appellee.

ABSTRACT AND BRIEF OF

R. F. LYON, Attorney for Appell~~ees~~ants.

J. W. BURKE & CO., PRINTERS, MACON, GA.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1886. No. 238.

Eliza Adams et al. vs. William E. Collier, Assignee

OF BENJ. B. BARNES, BANKRUPT.

Appeal from the Circuit Court of the United States for the Western Division of the Southern District of Georgia.

ABSTRACT AND BRIEF OF APPELLANTS.

On the 25th of September, 1863, Benj. B. Barnes, the bankrupt, in the State of Georgia, Crawford county, made his deed to the appellants, for a tract of seven hundred and seven acres of land lying in the counties of Crawford and Houston, for the express consideration of $10,000.00, with clause of warranty, etc. The deed was executed in all the forms of the law and recorded in the county of Crawford on the 26th of March, 1864, as required by law, and in the county of Houston on the 30th of September, 1874; and in March, 1874, Benj. B. Barnes was adjudged a bankrupt on his own petition. The bankrupt, in the schedule attached to his petition, returned this tract of land as a part of his assets, and on the 14th of January, 1876, the assignee filed his petition in the District Court of the United States for the Southern District of Georgia, reciting that the bankrupt had returned these lands in his schedule as a part of his estate to be administered, and that the title to the said lands was in dispute between him as the assignee, and the appellants, the grantees in the deed aforesaid, and that they claimed the title for said lands under the deed aforesaid, which they claimed to be a voluntary deed, and that they were represented by Richard F. Lyon as their attorney, and that said bankrupt had had the continuous and uninterrupted possession and use of said lands from the date of said deed, and that the said grantees were his children, and he prays the Court for an order for the sale of all said lands, with such order as to the holding the proceeds of said sale to answer any suit that may be instituted

therefor by any of said claimants, that the Court might prescribe, with such notice to claimants as may be deemed reasonable in accordance with the provisions of Section 5063 of the Revised Statutes of the United States, said petition being duly verified. And on this the Court passed its order in writing, requiring notice in writing to be given to each of claimants or their attorneys, to appear before that Court on the 15th of April, 1876, to show cause why the prayer of petitioner for the sale of said property ought not to be granted. And on the 10th day of May, 1876, the appellants appeared in said Court and filed their answer in writing duly sworn to, in which they set up that said deed was not fraudlent and void, but was made in good faith to said grantees, all the children of said Barnes, and that the same was but a small portion of the property that he then owned and that he owned besides this property, a large tract of land of twelve hundred acres, worth $12,000.00, which he continued to own up to his adjudication in bankruptcy, and was also the owner of a large amount of other property consisting of slaves and other pr perty to the value of $40,000.00 in good money, and his debts at that time didn't exceed six thousand dollars, and a large portion of that was for purchase of negroes, that he has made no debts since of any importance. The whole amount of his debts at the time of his adjudication in Bankruptcy, except the one for negroes, did not exceed $600.00, that said deed was not fraudlent, to hinder, delay, or defeat the collection of any debt due and owing by him, but was a *bona fide* advancement to his said children, which he could well afford to do at the time, out of the great bulk of his estate, leaving a superabundance out of which to pay all his debts then due or subsequently created, and to make similar advancements to his other children, and the said deed was duly delivered.

That while it is true that the said Barnes had been adjudged a bankrupt, he was in fact not a bankrupt, nor insolvent, and there was no occasion for his application to the Court for the benefit of the Act, and that said tract of land was put into his said returns by the fraudulent conduct of others, the said Barnes at that time being quite old and in feeble health; that although the said Barnes had been in possession of said lands, he held and used the same for the benefit of the said grantees, and they pray the Court that the said Collier, the assignee, shall account to them for the rents and profits derived from the use and occupation since his appointment, and not to the bankrupt estate, as the same is their property, and not that of the bankrupt. (See Record, pp. 19 to 26.)

On the issue they thus made up the same was continued in said Court until the November Term, 18 9; both parties having taken and brought into Court evidence according to the rules of the Court, when the assignee came into Court, and on his motion the following order or judgment was allowed by the Court and passed.

U. S. DIST. COURT FOR SOUTHERN DIST. OI

November Term, 1879.

In the matter of Benj. B. Barnes, Bankrupt. Petition o
sell real estate.

W. E. COLLIER, *Assignee, vs.* MOSES BARNE

William E. Collier, the assignee of B. B. Barnes, make
to the Court to withdraw his foregoing cause without
either party or to any other preceedings touching the s
of said petition, and it is accordingly so ordered.

J. ERSKINE, *U*

This was done on the 29th of November, 1879. On t
December the appellants filed their petition, in writing, in and to said Court, setting up their title and claim to said lands, substantially as they had set it up in their answer to the petition of the assignee to sell, and that, although it was their property and improperly returned as the assets of the bankrupt, and under color of his assignment, the assignee had taken possession of said lands, and was then in possession and control of the same, receiving the rents and profits. Petitioner further showed that the assignee had applied for leave to sell the lands for the benefit of the bankrupt estate, to which proceedings these appellants had been made parties, and had come in and shown for cause, and so were at issue on the same from the year 1876 down to the present term of the Court, evidence being taken on both sides and in Court to show the whole of said cause, when said assignee capriciously withdrew his said petition without the consent of claimants, and without any adjudication by the Court of the issues made therein, although claimants were present in Court, and had been for term after term for a series of terms, asking, demanding and urging a trial of the same, so that the title might be settled, and this cloud on it removed and claimants restored to the full enjoyment and use of their said property. They, therefore, prayed the Court to direct said assignee, who was but the officer of the law in the premises, and within the control and direction of the Court, having especial jurisdiction of all such and like questions, to put the claimants in possession of said property, and to account to them for all the rents he had received therefrom, and to render to the Court an account of them. This petition being duly verified and filed, the said Court, on the 3d day of December, during the same term, passed an order that the assignee should show cause before him on the 8th of December, in Court, why the petition should not be granted, which order was duly served on the assignee, and on the 9th of December thereafter came into Court and demurred to the same on the ground that the Court had not the jurisdiction or power in such form of proceeding to grant the prayer of petitioners. The proceeding and demurrer thereto is still pending

in said Court, and a part of the said proceedings in bankruptcy of the said Benjamin B. Barnes. (See Record, pages 163–167.)

Now, on the 16th of December, 1879, the said Collier, assignee, brought his bill in equity in the Fifth Circuit Court of the United States against the said grantees for a cancellation of said deed for said lands in controversy, in which he claimed that said deed was never delivered by said bankrupt to the claimants, defendants in said bill, or to anyone for them in the presence of the subscribing witnesses, nor did he believe that it was ever delivered to them until the said Bankrupt became so greatly involved that he feared his creditors would reach the said lands; that the acts were wholly voluntary, founded on no other consideration than blood; that Barnes remained continuously in possession of said land, using it as his own, paying taxes on it, obtaining credit upon the faith of the same being his property, before, during and after the late war, up to the adjudication in bankruptcy, when the same was turned over to him.

That no suit or action at law or equity had been instituted against him by defendants for said property, and more than two years has elapsed since the accrual of their right of action, if they ever had any, since the assignment to him, and he submits that under Section 5057, Revised Statute of United States, the defendants' cause of action against him for the recovery of said land is barred; that while said voluntary deed is, as complainant believes, void, and defendants' said cause of action barred as stated, yet it rests as a cloud on his title, and he prays the Court for a decree ordering defendants to deliver up the deed aforesaid, that the same may be cancelled and declared null and void, as conveying no title, and that the land be sold and administered by him as part of the bankrupt's estate. Discovery was waived. To this bill the said defendants appeared in Court and filed their answers, claiming the title to said property as their property absolutely in fee simple against said Benjamin B. Barnes, and all the world; that the said deed was duly delivered, and the possession of the lands followed the deed, and had been in their possession continually, either by themselves or by their agent, B. B. Barnes holding for them up to his adjudication in bankruptcy, and that they had paid the taxes on it, and the said Barnes had accounted to them for the rents. They denied that Barnes, the bankrupt, had even claimed the lands; but, on the contrary, they say that he had uniformly treated it as their property. They also claimed that the deed was *bona fide*, not made to defraud creditors; in fact, reiterating all that was claimed, in their answer to the petition to sell, as to the solvency of Barnes when he made the deed. They denied that their title to said lands had been cut off by the statutory bar; that the statute referred to of 5057, Revised Statute, did not cut off their right to this property, and did not apply to cases of this sort; that the assignee only took such possession himself as the bankrupt had, which

was that of agent or trustee for these defendants; that this statute was not intended to vest a title to property in the assignee that didn't belong to the bankrupt, and their title could not be cut off except by their own conveyance or by prescription title, neither of which existed; that the act was intended only as a personal protection to the assignee; that if that statute would operate as a bar at all, it would equally bar the assignee from the present proceeding, and that they are now here in Court on the demand and at the suit of the assignee to settle the question of this title, and they are properly before the Court for that purpose. They also plead that after they discovered that the assignee was claiming said lands as the bankrupt's, but before they could bring any suit they had to follow the assignee into the Bankruptcy Court upon his own petition, and at the order of the Court, to try the very question made by this bill, and they plead these proceedings and the action of the Court as a reply to the statutory bar; and they claim that, inasmuch as they, in good faith, went into said Court on the notice of complainant and the order of the Court, and there promptly and in good faith set up and maintained their title to said property, without bringing another suit, and thus exposing themselves and the complainant to further costs, expenses and litigation, they did all the law required of them; that the defendants were detained in that Court awaiting a trial on the merits with the most perfect confidence and trust in the power, wisdom and justice of that Court to protect said property, and the title thereof to defendants in all its integrity, from May, 1876, to December, 1879; and now, if the complainant could, by withdrawing his petition, cut off the right of defendants, it would be using the law, the process of the Court, and the Court itself, to practice a flagrant fraud on defendants; but this is exactly what the complainant has done, and now claims and asks this Court to so adjudge. Defendant insists that no such inequitable plea or demand be allowed by this Honorable Court. (This answer is very full and complete, and the attention of the Court is invited to it. Record, pp. 6 to 16.)

Replication having been filed the cause came on for trial, when all the evidence that was taken in the District Court by the parties on the petition for leave to sell, and other evidence taken under the bill in equity was submitted. As to the execution and delivery of the deed, Vinson testified, wrote the deed and witnessed it. Barnes sent for him to write his will and assist him in settling his business. He said that his last set of children had some property by their grandfather, and I advised him that if he wished to make it sure he had better make a deed to the mill property to his first set of children, and he assented. He then made the deed. (See page 156, Record.) It was made at Barnes' house, in Crawford county. Andrew J. Barnes was in possession at the time. (Record, page 133.) His impression is that it was not delivered at that time—don't know when it was delivered. (See page 27.) David John, another witness

to the deed, says his recollection is that after it was executed it was handed to Benjamin B. Barnes, who took possession of it. None of the grantees were present. (See page 48.) Benjamin B. Barnes says the deed was executed on the day written therein, and he delivered the deed to his son Andrew a day or two after it was made. (Record, page 77.)

Andrew J. Barnes says the deed was delivered to him the same day the deed was signed in presence of the witnesses. He was in possession of the property at the time the deed was made, and he immediately took possession for himself and the others named in the deed, and remained in possession about three years. Left the property in 1866 because he wanted to go to Texas. He accounted for the rents while he had it of about $1,000.00, under an agreement made with the other parties, to Benjamin B. Barnes. There has been no accounting since he left. When he moved to Texas he delivered the original deed to Eliza Adams, wife of John D. Adams, he being authorized to act as agent by the parties concerned. (See page 66, Record.)

Eliza Adams and John D. Adams say they first saw the deed in the Fall of 1866. Andrew Barnes, her brother, gave her the deed at that time, at his own house. It had then been recorded in Crawford county, and it remained in possession of John D. Adams from that time to November 4th, 1875, when it was delivered to James M. Jones, during which time it was kept by John D. Adams, at his home with his papers of value. The deed was delivered to Jones to be used by him for some purpose in the bankrupt proceedings. (See Record, page 91.) The land was given in for taxes by the grantees for the year 1868. (See page 22.) And for 1866. (See page 15.) And the mill property on it insured by A. J. Barnes in 1866, as his property. (See page 17.)

Andrew Barnes turned over the property to Josias Wright, in 1866, and put him in possession when he left for Texas. (Page 66.) Benj. B. Barnes don't know to whom Andrew J. turned over these lands, nor when, nor for whom. I got possession of the place by paying taxes on it. I held the place for the parties named in the deed. I can't remember how many years I paid taxes on these lands, as a father giving the money to them, my elder set of children, without any charge against them. I accounted to Remillison Adams, to John D. Adams for his wife, to Martha, and all the rest for the rents of the land and mill. I can't remember how much I paid them or for what years; I paid them along as I could get it. I spent a good deal of money out of the proceeds of the mill keeping it in repair. (P. 79.)

John D. Adams says that Benj. B. Barnes held the lands for the grantees in the deed. He paid taxes on these lands as far back as 1870, and further for several years. He accounted to me for my wife

for rent of lands and mill. He paid me rents for Remillison Adams and Martha. Don't recollect the amounts, they were small. One payment was for 1869 or 1870, about a year and a half after he paid the other. Remillicent Adams says B. B. Barnes sent me $150.00 for my share of the rent of the mill in 1870. This is all I got from him.

B. B. Barnes says: never quit giving in the land as agent until Madison Jones had it levied on. Dont know when that was, but he quit on that account. He returned the lands in his petition and schedule in bankruptcy because he was misled by Joel R. Griffin, the register in bankruptcy, who told me I had to give everything in that I had ever given in for taxes, including cows, mules and everything, but I don't know for what reason Griffin told me to put the negro hire due to my wife in the schedule, and I believed anything Griffin said. My wife went with me to Griffin. I was very "poorly" at this time; it took two men to help me in and out of the carriage. Joel R. Griffin influenced me to go into bankruptcy. He was to clear me of my debts and was to get $500.00 for it. I gave him my note for it. (Pp. 79, 80.)

When this deed was made in September, 1863, Benj. B. Barnes owned and was in possession of twelve hundred acres of land known as his home place, twenty-five or thirty negro slaves, and other personal property, besides the premises in dispute, of the value of from $20,000.00 to $40,000.00. (See A. J. Barnes, page 67; John D. Adams, B. B. Barnes, page 76; W. G. Vincent, page 76; Josias Wright, page 132; J. W. Hardison, page 123.) At the time he made this deed he was in debt to Madison Jones about $5,000.00; (J. W. Hardison, page 123.) Barnes himself says his largest debt was to Madison Jones, about $3,000.00 principal; $400.00 to his daughter, Sarah Vinson; and after paying all his debts, his property, besides these lands, was worth $15,000.00 or $20,000.00. (Pages 76, 77.)

Madison Jones says Barnes owed him at the time of this deed a debt of $4,171.73, principal and interest, given for the purchase of negroes. (Page 137.)

The complainants put in the testimony of Hardison, Taylor and Thomas. Hardison says, I have known the lands specified for twenty-five or thirty years. Benj. B. Barnes has always possessed and controlled them since he knew them until he went into bankruptcy. He owned them as his own property, and got all the benefit of them until he went into bankruptcy---know this from the fact that he gave them in for taxes, as his own land, and I have at least twice since the time paid the taxes and taken the receipt for it in his own name. He called the land his and had a saw mill and wool factory on them, and had them repaired and paid for repairs himself. (See page 123.)

William Thomas says Barnes possessed and controlled these lands until he went into bankruptcy. He held possession and used them after the deed to his children, just as he had before, and that was the way I understood it. He hired me and paid me to work at the mill in 1868 and 1869. (See page 124.)

James Taylor says: B. B. Barnes possessed and controlled the lands the greater part of the time he knew them, as owner. He employed labor to repair the mills, received the toll, and called the lands his. (See page 125.)

W. W. Henderson says: In the year 1866, Andrew Barnes was running a mill in Crawford county. Heard a conversation between Martha Cowart and Andrew Barnes about the time the latter was going to Texas, at Andrew's house, near the mill, and they were talking about the mill and mill lands. She said she thought the mill and mill lands ought to belong to the older set of children. Andrew answered that it was in old Ben's possession and the younger children would get the benefit of it. He further said that he had worked for old Ben long enough, that he was going to Texas and set up a business for Andrew. (See page 52.) The value of the property returned by B. Barnes in his schedule, other than this land, amounted to $9,584.25, including claims to homestead exemptions. (See pages 107 to 109, also pages 175 to 179.)

The defendants in this bill had also filed a cross-bill setting up their titles to this land, with a prayer that the Court decree that the assignee deliver the land to them as their rightful property under said deed, together with the value of the rents from 1875, and for general relief. Upon the hearing the Court decreed that the deed to these lands be delivered to the Clerk of this Court by the persons having custody of the same, to be cancelled, and so far as it affects the rights of creditors of said bankrupt that it is null and void of effect.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1886. No. 238.

Eliza Adams et al. vs. W. E. Collier, Assignee

OF BENJAMIN B. BARNES, BANKRUPT.

1. The deed of the 25th of September, 1863, from Barnes, the bankrupt, to Eliza Adams *et al.*, appellants, for the premises in dispute, although in fact a voluntary conveyance, was a valid deed, duly executed and delivered, its record being sufficient evidence of the delivery, *aliunde* the other testimony. Buckley against Buffington, 5th McLane, 475; Welborn against Weaver, 17 Ga., 267, *et passim.*

And Barnes, the bankrupt, and his assignee holding under and standing in his shoes, were estopped to deny it. Coke upon Littleton, § 446; Brown vs. Vansant, 15 Ga., 525.

2. Barnes', the bankrupt's, subsequent possession for the donees was the possession of the donees, he accounting to them for the rents, could never ripen into a title or divest that of the donees. Shelburn against Jones, 20 Me., 70; Wood vs. Turner, 7 Hum., 577; Legler vs. Malone, 3 Hum., 16; Bliss vs. Smith, 1 Ala., 273; Pogue, 6 La. Ann., 489.

This possession being thus explained, removes its character as a badge of fraud.

3. The deed being made at the time the grantor was in prosperous circumstances, although indebted to a small amount, and being but a reasonable provision for his children, the donees, as a gift to them, according to his state and condition in life, leaving largely more than enough for the payment of his debts, was a good and valid conveyance against his creditors, free from all fraudulent intent, and cannot now be impeached on that account. In fact the whole evidence shows that the deed was made in good faith. Wood against Davis, 25 Ga., 686; Clayton against Brown, 17 Ga., 217; Hindes, lessee, vs. Longworth, 11 Wheaton, 213; Cadogan against Kennett, Cowpr., 432; Doe *ex dem* Watson vs. Rutliger, Cowpr., 705.

The ground on which this deed was impeached in this bill was that the deed never was delivered by the bankrupt to the donees or any of them, in the presence of the subscribing witnesses thereto, or ever delivered at all, until the fear that his creditors would reach the land. That the bankrupt remained in possession of the premises after the deed was made as he had before; exercising acts of ownership and control over it; receiving rents, issues and profits arising therefrom; paid the taxes on the same as his own property during and after the close of the war. It was impeached on no other ground. It was not impeached as having been made with any fraudulent intent. On the trial, the proof showed without contradiction that the deed was delivered, not in the presence of the witnesses, but to one of the donees a day or two after the date of its execution. That it continued in their possession from that time to the present. That one of the donees was in possession at the date of the deed and continued in the possession until 1866, when he removed to Texas. That while the bankrupt was in possession of the land after that time, he was there as the agent of the donees, and accounted to them for the rents. That he never did give in and pay taxes on the land after that date. There was no proof whatever that the bankrupt made any debt after the deed was made, on the faith of the property; that anybody gave credit on the faith of its being his property after that time. Nor does the complainant make it appear that that property was necessary to pay existing debts; and the proof was overwhelming, and none to the contrary, that at the making of this deed, he was in possession of, and the absolute owner of property worth four or five times the amount of all of his existing debts; and that that deed was made to equalize these older children with his younger children. The whole proof was so ample and clear as to *bona fides* of that deed, that it was not even impeached on the trial, or any effort made to sustain that ground of the bill.

The second ground on which a decree was asked by the complainant, was that no suit or action at law or in equity had been commenced by the appellants against the assignee for the recovery of the premises, and that more than two years had elapsed since the accrual of their cause of action, and since the adjudication of the bankrupt and the appointment of an assignee; and they claim that, under Section 5057 of the Revised Statutes of the United States, that if they, the donees or appellants, ever had any cause of action against him for the recovery of the premises, that the same was barred, and they ask to have the deed removed as a cloud upon the complainant's title, as interfering with the sale of the land.

When the assignee was advised of the adverse claim of the appellants, he could not administer that land or sell it so as to defeat that title, except upon the order and decree of the Bankrupt Court by proceedings had under Section 5063 of the Revised Statutes. It was his duty, therefore, to go into that Court to have this question set-

tled as to the title to this property. Accordingly he did file his petition in that Court, under that section of the Revised Statutes, for leave to sell the land, setting forth this claim, and asking that they be made parties and their attorneys served with notice; and on the 19th of January, 1876, it was filed in the Court, and an order of that Court taken, requiring notice to be given to the appellants to show cause in that Court, on the 10th of April, 1876. (See Record, page 105, 106.) To that petition the appellants appeared and filed their answer, setting up their right to the land and insisting upon their title, and on this an issue was made up, the donees accepting the proceeding as a proper and sufficient one for the purpose, and the forum a proper Court to settle it, and the parties proceeded to take testimony, which was brought into the Court, and this proceeding was continued in the Bankrupt Court without fault on the part of the appellants until the November Term, 1879; and now, when that proceeding was ready for hearing, the evidence all taken and in Court, the assignee came into Court, and on his own motion, without assigning any reason for his action, by leave of the Court, withdrew his said petition on condition that it should be without prejudice to either party to any other proceeding he may be advised to institute touching the subject matter of said petition, which was allowed to do so by order of the Court. (See Record, page 119.) And the assignee then, almost immediately, filed this bill, and the donees appeared and filed their answer, still insisting upon their title to the land, and, upon the hearing of the issue thus made, all the evidence taken upon the petition to sell—and it formed almost entirely the whole of the evidence had on the trial—was used as evidence.

4. The bankrupt having conveyed this property by a valid deed to appellants, accounted to them for its rents, returned and paid the taxes on it as their property from 1865 to 1876, had no title or interest in it except as their tenant and agent or trustee, and the possession of it in that right, for them, the deed of assignment in bankruptcy to the assignee passed to him no other title or interest than the bankrupt had at the time of his adjudication in bankruptcy, and he, the assignee, held just as the bankrupt held it, up to that time, it was no part of the estate of the bankrupt to be administered. Re Dow. 6 B. R., 10. 12; Rogers, 6 B. R., 246; Ferguson vs. Buchan, 569; Chase's decision vs. Wynne, 4 B. R., (29) 116; Sedgwick vs. Carr, 4 B. R., ~~119~~; Rockford R. R., 1st Low, 345; ~~Re Dalby T. D. 431~~; Hamilton National Loan Bank (2 Dillon) 230; Bentwill vs. Albany, 1 Hoges, 620; Storrs vs. Engill, 3 Hughes, 414; 2 Hughes, 121.

(196) or 496

It was a fund or property in the possession, custody and control of the Bankrupt Court, through or by its own officers, under its direction, and no other court could intervene to prevent it. Re ~~Ballow~~ Barrow, 1 B. R., 125. Taylor vs. Carroll, 20 How., 583; *ex parte* Christie, 3 How., 292.

In this condition and his holding of this property, the assignee had no cause of action at law or in equity on the score of disputed title, or otherwise in respect to it; it was not controlled or affected by Section 5063 of the Revised Statute. Nothing was necessary or proper for him to do but to deliver the possession and property to its true owners on their application for that purpose. (See Record, page 163.) And the Court should so direct him. Re Waterman, 4 B. R. (186) 553. Re Harthill, 4 B. R., ~~392~~. 552

5. This bill did not lie at the instance of the appellee to remove a cloud from his title, as he had none, and it ought to have been dismissed on that account, it only lies at the instance of the true owner. Troutman vs. Heidleberger, 32 Miss., 268. Ross vs. Young, 5 Sneed, Tenn., ~~623~~. 527

6. § 5057 of Revised Statute is not one of prescription, and does not vest or divest title, was not so intended, and it is very doubtful whether it is applicable to, or affects this case in any manner. (See *ex parte*, Bryan 14, B. R. 71. Had the assignee sold this property, without an order to do so, or a decree, to which appellants were proper parties, the purchaser would not have acquired any title, at least only such as the assignee had. Steadman vs. Taylor, 77 N. C., 134; Henry vs. Ingalls, 126 Mass., 230; Hayden vs. Osborn, 64 Ill., 571; McKeenan vs. Fletcher, 2 La. Ann, 438; Judson vs. Lathrop, 6 La. Ann., 587; Baker vs. Vining, 30 Maine, 121; Anderson vs. Miller, 15 Mass., 586.

These views must settle the real question in this case, that is as to where the title of this land lies, showing it to be in the appellants, and this was not seriously disputed or denied on the trial in the Court.

II

The complainant rested his claim for a decree on the other question made by the bill, and that is, that appellant brought no suit at law or in equity for the recovery of this property against the assignee within two years after the cause of action accrued as required by Section 5057 of the Code, and they were barred.

The decree cannot be maintained on this ground.

7. When the bankrupt returned this land in his schedule as a part of his estate, and the assignee took the possession, and was advised of appellant's adverse title, he could not administer it, except as directed by sections 5061, 5062 and 5063 of the Revised Statutes—by reference of the dispute to arbitration, by sale at his discretion, or by application to the Court for direction with notice to the claimant. He chose the latter, which is certainly the best, for the first was unsafe, and depended on the agreement of the other party, and a sale without a settlement of the controversy, as to title, would have resulted in a sacrifice of the property.

When the assignee commenced this proceeding under the law, with notice to these claimants, they were obliged to follow him into that Court, and defend their title or lose their land, by its sale under the judgment of that Court. They did so, and could not have commenced any other suit in any other Court. And when the assignee withdrew that proceeding, the claimants immediately commenced a proceeding of their own in that Court to compel the assignee and officer of that Court, having that property in his custody, to deliver it to them. While that proceeding was pending, and before the Court could pass on it, this bill was filed within a very few days after the assignee withdrew his petition. Up to that withdrawal this statutory limitations had not run against claimants, but they were properly and necessarily in Court, setting up, defending and insisting on their title in good faith, trusting to that Court's judgment to settle the right. That Court allowed this proceeding to be withdrawn only on the condition that either party might have the right to institute any such other proceeding as they might be advised touching this subject matter of said petition.

8. The assignee's petition to sell in Bankrupt Court, with notice to claimants, and within time, as it was; the filing of claimant's answer, claiming the land under their deed; the proceeding had in that Court on the same; the filing of claimant's petition to same Court,

to direct the assignee to deliver them the property; its allowance by the Court, and order to assignee to show cause, and then the commencement of this proceeding in equity and proceeding under it, dispensed with any other suit for this property by the appellants, and is a perfect reply to the claim of the statutory bar, as to the appellants. Any other suit by appellants, if they could have brought one, was unnecessary. It could only have made the same issues, increased the litigation and the expenses, and accomplished no good.

See Justice Bradley's decision in City of Brownsville vs. Cavazo, 2 Wood's Report, 365, as affirmed and approved on appeal in S. C., 10 Otto, 144-5. Lockhart vs. Horne, 3 Wood, 542; Gillman vs. Reed, 76 Pa., 462; Hunt vs. Spalding, 18 Pick., 52; Bond vs. Hopkins, 1 Sch. & L., 430. This principle is distinctly recognized and approved in Jordan vs. Brown, 73 Ga., 495.

In each of the two cases, to 76 Pa. and 18 Pick, it was held that when the defendant pleaded a claim against the plaintiff's cause of action, a debt in his favor against the plaintiff, the statute of limitation is suspended as to such cross action, and if the plaintiff's suit is dismissed or withdrawn, and pending such suit the statutory period had attached to such claim, it was not barred. Suits could be instituted, and the time the other suits and sets off were pending is counted off.

To the same purport is Wattingly vs. Boyd, 20 How., 132.

To allow the statute to bar the rights of parties under the circumstances, would be unconscientious, unjust and inequitable.

9. A Court of Equity will never allow the right of a litigant to be impaired or defeated by such act on the part of one of the parties in any proceeding pending before it; here if there is a bar it is brought about by the act of the assignee, and he ought not to be allowed to take advantage of his own wrong.

2 Ch. Cases, 217.; 1 Ver., 74.; Gilbert vs. Emberton, 2 Ver., 503; Baker vs. Pritchard, 2 Atk., 387; Pink vs. Thornycraft, 1. Bro., C. 256; Love vs. White & Cox, 4 Haywood, Tenn.; Puttney vs. Warren, 6 Ves., 91, where Lord Eldon says: "If there is a principle upon which Courts of Justice ought to act without scruple, it is this, to relieve parties against that injustice occasioned by its own acts or oversights at the instance of the party against whom the relief is sought."

In Johnson vs. Towsley, 13 Wall., 84, Justice Miller says: "There has always existed in the Courts of equity the power in certain classes of cases, to inquire into and correct mistakes, injustice and wrong, both in judicial and executive action, however solemn the form which the result of that action may assume." See also Bein vs Heath. 6 How. 247

10. The Bankrupt Court had jurisdiction of the subject matter, and the parties on account of the conflicting claims to this property.

Pp. 4, 5, 6, of §4972, Revised Statute.

Ex parte Christie, 3 How., 312; Chemning Canal Bank vs. Judson, 8 N. Y., 254; ~~Deady, 133~~; Foster vs. Ames, 1 Low, 313; Matter of Harthill, 4 Ben., 448. It is true that Judge Clifford, in Knight vs. Cherry, 5 B. R. 309, says or intimates that this summary proceeding is not a proper remedy, for the reason that it makes no provision for the trial by jury, but this cannot be an objection when the third person and adverse claimant comes in on the notice, submits to the jurisdiction, accepts the remedy and takes issue with the petitioners on the merits of the controversy, and asks the judgment of the Court in his favor.

Ferguson vs. Peckham, 6 B. R., 569; Re. Finney, 6 B. R., 40; Re. Lyon, 6 B. R., 182; Re. Marks, 2 B. R., 175; Neal vs. Beckwith, 2 B. R., 82; Re. Bonestead, 3 B. R., ~~427~~. In the latter case, Nelson, J., directed, "That the petition and answer be amended, and stand for bill and answer. A like course was taken in Re. Alexander, 3 B. R., 6, and in Knight vs. Cherry, and in Ballow's case, 3 B. R., 177. In these and all the other cases when such direction was given, it was done on the objection of the opposing or third person to this form of proceeding. 5 17.

None of the Courts, so far as I have seen, have ruled that they would not hold this proceeding as a proper and sufficient remedy on the petition of a third person against the assignee. On the contrary, they expressly state that these decisions do not rule that a third person cannot avail himself of this summary remedy, and all those cases were proceedings by the assignee for the recovery of property in the possession of adverse claimants.

11. If the condition placed [illegible] assignee's application, to withdraw his petition, did not prevent the operation of the statutory bar as to appellant, it did not as to assignee, and as this proceeding in equity, if it be regarded as an original and independent suit by the assignee for the property, then the statute applied to and barred it. For without the former proceedings and

that order or judgment, the appellee was barred by that act, and the same being properly pleaded and insisted on by appellants, the Court below should have dismissed the bill.

Sedgewick vs. Casey, 4 Ben., 562; 10 Batch'r, 376; 1 Sawyer, 306; Anderson vs. Dale, 11 B. R., 352; United States vs. Maillard, 4 Ben., 459; Friedlander vs. Holliman, 9 B R., 33; Baily vs. Glover, 21 Wall, 342.

12. If it be said that both are barred and neither can have a decree for the property under this bill on account of this statutory bar, then we say that the bill should be dismissed at the assignee's costs and the matters remanded to the Bankrupt Court. Where petition of appellant is still pending, and on which the right of the parties may be settled or the order withdrawing petition to sell can be vacated, and these proceedings can be converted into a bill of equity. And under the rule that the whole of the proceeding in bankruptcy is one continuous suit, always open for re-examinaton, and any order made in its progress set aside upon cause shown.

Sandusky vs. National Bank, 23 Wall, 289; Littlefield vs. Delaware and Canal Co., 3 Clifford, 371; 17 B. R, 1; Wiswall vs. Campbell, 3 Otto, 348.

But why the necessity of all of this, when this Court had, and has the whole case, and can do full justice by settling the rights of the parties and so decreeing.

R. F. LYON,
Solicitor for Appellant.

122-3F2

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

ELIZA ADAMS, ET AL.,

Appellants,

vs.

W. E. COLLIER, ASSIGNEE, &C.,

Appellee.

Appeal from Circuit Court of United States, Southern District of Georgia.

BRIEF OF THOMAS B. GRESHAM,

Counsel for Appellants, in reply to Brief of Appellees.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

ELIZA ADAMS, ET AL.,
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vs.

W. E. COLLIER, ASSIGNEE, &C.,
Appellee.

Appeal from Circuit Court of United States, Southern District of Georgia.

ASSIGNMENT OF ERROR.

The Assignment of Error in this appeal is simply that the decree of the Court below was erroneous in that it required the delivering up and cancellation of the deed to the lands in dispute, and in declaring said deed to be null and void, so far as it affects the rights of creditors—no grounds for the decision being stated in the decree.

BRIEF.

To a proper understanding of this assignment, appellants' counsel thought it unnecessary to abstract the Record at greater length than has been done, and cannot now see that any portion has been supplied by appellee's counsel, which throws any additional light on the case.

Appellants insist that there was no serious dispute in the Court below as to where the title to this land lies, as will be readily seen from a careful perusal of appellee's brief and the Record itself. The deed was attacked on two grounds :

1. Because it was not delivered to the grantees.
2. Because the grantor remained in possession.

But it was not impeached for any fraudulent intent in its execution.

On the question of (1) delivery, the evidence is undisputed that it was delivered to the grantees within a day or two after its execution, and recorded in the county of the residence of the grantor and where a part of the land lies, as required by law; and (2) as to possession, the citations of the Record made in appellee's brief do not sustain the proposition that the bankrupt, Barnes, claimed this property as his own after the making of the deed. The only witnesses who were in position to know, B. B. Barnes, A. J. Barnes, J. D. Adams and J. Wright, all testify that his possession was as agent for the grantees in the deed; and the others all testify in effect, that while he seemed to be managing and controlling the property as his own, they did not know in what capacity he acted. The testimony relied on to impeach the good faith of the transaction is entirely presumptive and cannot for a moment be relied on to overcome the deed and the positive testimony of the only parties who had any actual knowledge of the circumstances.

The possession of the grantor is fully explained, and the law requires no more.

It is true that appellants did not abstract the evidence of J. M. Jones at length, and while the omission was unintentional, yet it can throw no possible light on the case. The fact that he declined to take confederate money in payment

for negroes, and the motives that controlled him cannot possibly influence this Court. The fact remains undisputed that at the time this deed was made, Mr. Jones' debt was the only one that Barnes owed of any consequence, and that even if the negroes themselves were not counted as property, there was a large amount of land and other property in the grantor's hands, far in excess of any demands that were likely to come upon him.

The reasons established by the evidence for making the deed were ample and satisfactory, and showed not only the utmost good faith, but what appeared to be the demands of equity and justice to the grantees.

Loyd vs. Fulton, 91 U. S., 480.
11 Wheat., 199.

It is asserted by the appellees, that the purpose of Barnes to hinder and delay the collection of Jones' debt by making the deed to appellants, is shown by his subsequent efforts to defeat its collection by going into bankruptcy. It would seem to be a strange doctrine to maintain that a man's going into bankruptcy eleven years after making a voluntary deed, by way of providing for his children, is a badge of fraud—the evidence of his abundant solvency at the time of the making of the deed being undisputed; and there being no bankrupt law in existence, or for many years afterwards.

Wallace vs. Penfield, 106 U. S., 262.

In reply to the first point in appellee's brief, it is only necessary to state that the appellant relies upon nothing in his brief that is not sustained by the Record.

To the third and fourth points, appellant replies that though the witnesses named may be somewhat interested, they are, nevertheless, uncontradicted, and therefore entitled to full credit.

To the fifth point, as to the Statute of Limitations, a complete reply in made in appellants' original brief.

The sixth point is undisputed.

The seventh point asserts that appellants have been "silent," and have "omitted to explain;" whereas both the making of the deed, its delivery and the possession under it are fully explained by a number of witnesses, whose evidence is undisputed.

To the eighth and ninth points, a sufficient reply is that the delivery of the deed is undisputed in the Record by a single witness—and asserted by several—B. B. Barnes, A. J. Barnes and W. G. Vinson.

The point that the instrument was intended to be a will and not a deed, is contradicted absolutely both by the grantor and the scrivener—and by the strong circumstance that he actually made his will at the same time and place which was afterwards proven and executed—and why make two instruments unless one was intended to be of a different character?

The fact that the deed was only recorded at first in the county of Crawford certainly indicates no "effort to conceal" —for this was the county in which the residence and a part of the land were situated, and where a person put upon inquiry as to the title of this place would naturally search the records.

As to the 12th, 13th, 14th, 15th and 16th points of appellee's brief, appellants are perfectly willing to subject the deed in question to the scrutiny of the authorities there laid down. The decision in 11 Wheat. 199, was adopted in Georgia, and by it this deed is good and valid. See rule laid down in 91 U. S. 480, and in Wallace vs. Penfield, 106 U. S. 162.

The argument of appellee based upon the legislation in Georgia during the war can throw no light on the validity of this deed—for the fact remains that at the time of its execution, Barnes, the Bankrupt, was abundantly solvent even if his slaves were really of no value, though they were the very property for which Jones' debt was contracted.

By a decision rendered since appellants' brief was printed, the Supreme Court of Georgia have held that "possession remaining with the grantor, who has conveyed land by a deed absolute on its face, is the possession of the grantee and is held under him, and is not adverse to his title; and neither pre-

scription nor the statute of limitations is available as a defence to an action of ejectment founded on the deed."

Jay vs. Whelchel, Ga. Supreme Court, April 4, 1887, and not yet published.

If this doctrine prevails, then it is clear that the assignee in bankruptcy, can never avail himself of the statute of limitations as against the bankrupts absolute deed, for he stands in his shoes. Section 5057, Rev. Statutes, confers no such right and was never intended to apply to cases like this.

T. B. GRESHAM,
Counsel for Appellants.

122-382

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1886.

No. 238.

ELIZA ADAMS *et al.*, APPELLANTS,

vs.

WILLIAM E. COLLIER, ASSIGNEE OF BENJAMIN B. BARNES, A BANKRUPT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

ABSTRACT OF RECORD AND BRIEF,

—BY—

N. J. HAMMOND,
COUNSEL FOR APPELLEE.

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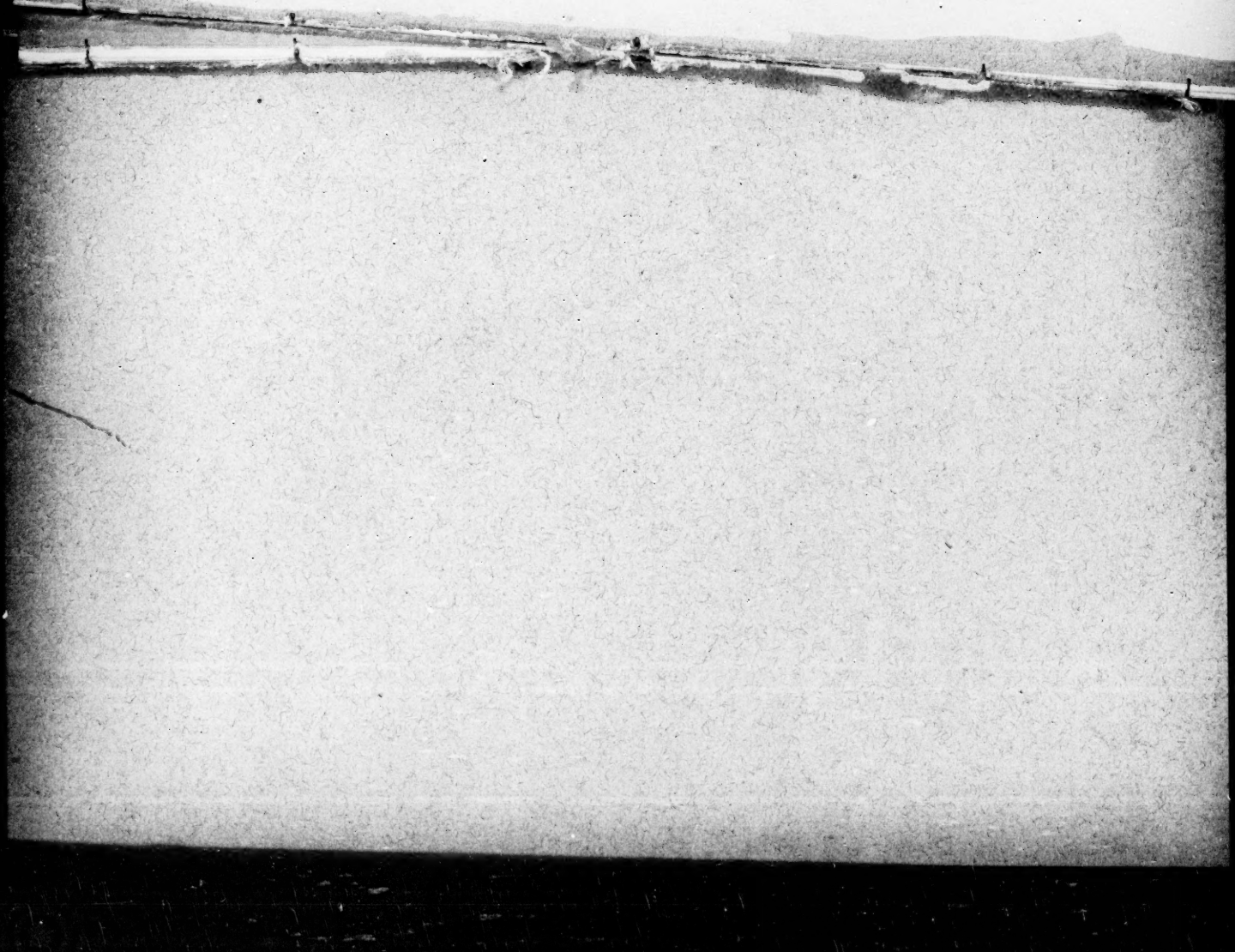

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ABSTRACT OF RECORD AND BRIEF.

(*The figures in* ( ) *refer to the printed Record.*)

The statement of the record in the brief of counsel for appellants seems too meagre for a full understanding of the cause.

On the 27th of March, 1874, B. B. Barnes filed his petition in bankruptcy by his attorney, Joel R. Griffin (R. 170). He was adjudged a bankrupt on the 2d of April, 1874, and a deed of assignment was made to W. E. Collier, assignee. On the 1st of June, 1874 (R. 110), Collier, assignee, took possession of the land in dispute, it being returned in the schedule of assets of bankrupt (R. 2, 311).

On the 19th January, 1876, Collier, assignee, filed a petition for leave to sell said lands. (R. 19-105). Defendants therein, appellants here, were ordered to show cause why petition should not be granted (R. 21, 105). One of the defendants, Mrs. Smith, filed answer 9 May, 1876, (R. 117).

On the 1st December, 1879, these appellants filed their petition, stating their title to said lands under bankrupt's deed of 1863; that Collier had possession as assignee ever since he was so appointed assignee; that they had shown cause against Collier's said petition, "when he capriciously withdrew same," at the then present term of the court, without their consent and without any adjudication on the merits of their prayer to be put in possession, and that Collier's account for rents. (R. 163, 167, inclusive). Collier was ordered to show cause, and on 9th December, 1879, demurred thereto because the "Court hath not jurisdiction or power in such form of proceeding" to grant their petition and prayer. (R. 167-168.) Nothing more appears to have been done with either petition than as above stated.

On the 16th December, 1879, Collier filed his bill. The bill charged, as to the deed of 1863, as follows:

Your orator further alleges and charges that said deed "was never delivered by the said Benjamin B. Barnes, the bankrupt, to the said defendants, or any of them, or to any duly appointed attorney or agent of theirs, in presence of the subscribing witnesses thereto, nor does your orator believe that it was ever delivered until the said Benjamin B. Barnes, the bankrupt, became so greatly involved that he feared his creditors would reach the said land. Your orator shows that the said deed was wholly voluntary, being founded on no other consideration than blood, the grantees therein being the children of the said

Benjamin B. Barnes. Your orator shows that the said Benjamin B. Barnes, after the date of said deed, remained continuously in the possession of the said premises as he had done before, exercising acts of ownership and control over the same until the same were turned over to orator as his assignee; that he received the rents, issues and profits arising therefrom, paid taxes on the same as his own property, and obtained credit upon the faith of the same being his property, both before the late war, during the continuance thereof and after the close thereof up to the filing of his petition in bankruptcy and the assignment to the assignee." (R. 2-3).

He set up that he had been in possession since June, 1874, never been sued by the defendants, that they were barred by §5057, R. St. U. S., and asked the cancellation of their deed as a cloud on his title. (R. 1-4).

The answer was sworn to only by John D. Adams, B. B. Barnes' son-in-law; nor by him except to the best of his knowledge. (See Verification, page 25).

As to the purpose in making said deed, the answer said that "as the said Benjamin B. Barnes was at that time—when this deed was made—living with a second wife, by whom he had a family of children—defendants being the children of his first and deceased wife—and as he had acquired some negro slaves by his last wife that were secured to her separate use, of which her children would get the benefit, and as this property contained in this deed would only be a suitable provision for defendants as a part of his children—having reference to his wife and younger children, himself and all his creditors and the balance of his estate—he made this deed
fendants as a provision for them out of his estate
equalize them with what his wife, children and
would have of the balance of his estate, includ

wife's separate estate—after the payment of all his debts —with no intent to commit any fraud on any one, nor to hinder, delay or defeat any creditor. Such a supposition could not be entertained for an instant, considering his condition as aforesaid and his perfect ability to pay every dollar that he owed at the time, with a large balance of property for the balance of his family." (R. 10).

The other parts of the answer, which seem material here, are as follows:

There was no need for the bankruptcy proceedings, because B. B. Barnes had, besides the property in controversy, more than sufficient for the payment of all his debts, "but being at the time so weak in mind from the use of intoxicating liquors as to be almost an imbecile, and he was in this weak condition when he was induced to this course by the artful practices of one Joel R. Griffin, a practicing attorney of the county of Houston, to serve some sinister purposes of his wife, most especially to defeat the title of defendants to the property named in complainant's bill." (Part 1—, R. 6.) In part 3rd, the answer was that bankrupt held the property in dispute from the last of 1867, but only as tenant of defendants, and passed no title by his bankrupt proceedings to complainant. *Ib.* Complainant's possession of the premises as assignee in bankruptcy soon after the date of the deed of assignment and ever since was admitted. Pt. 4th, p. 7.

Part 6th said the deed was actually delivered on the 25th September, 1863, in presence of the witnesses thereto, to Andrew J. Barnes for all of said defendants. (*Ib.* and part 9, pg. 8.) It alleged that the deed was recorded in Crawford county, not by B. B. Barnes, as charged, but by said Andrew J. Barnes. *Ib.*, part 7. As to that record they answered that the lands "formed one solid body or tract of land known as the Barnes mill

tract," containing about 708 acres which "lies immediately on the line of Houston and Crawford counties;" that bankrupt lived in Crawford on other land, and "the county of Crawford was therefore the proper place, under the law, for the registry of this deed," because persons dealing with bankrupt would properly and naturally go there to search for incumbrances and conveyances of his property. (*Ib.*, part 8.)

Part 9 declared that Andrew J. Barnes, for himself and the other defendants, had said deed recorded in Crawford county, gave in and paid taxes on said lands in 1864 and 1866 as his and their property, accounted to the others for the rents for at least part of the time; some to Jno. D. Adams (who verifies the answer), for his wife and $200 to Remillison; that in latter part of 1866, Andrew J. Barnes went to Texas, leaving Wright in possession as tenant, who, at end of 1867, turned over the premises to B. B. Barnes to hold for defendants. It alleged that B. B. Barnes, as such agent, gave in and paid taxes on said lands in Crawford county in 1868. And it exhibited two tax returns made by Andrew J. Barnes, and said they believed that in 1869, 1870 and 1871, B. B. Barnes gave them in as agent for defendants. (R. 8.)

The answer admitted that sometime after 1868, bankrupt may have given in the premises as his own, but they charged that his wife induced him so to do, although he had ever after said deed treated the property as defendant's; but these defendants had no knowledge that he had then given in these lands; that bankrupt for the past year or two of his tenantry accounted for the rents and ceased. But they said: "Knowing that their father was old and feeble as aforesaid," and collections uncertain, and they being widely scattered from each other, and not needing the rents and did not desire to sell the premises, and so

they just let it remain in his hands, knowing they could get it when wanted. (R. 9, part 10.)

The 11th paragraph of the answer set up that when said deed was made, B. B. Barnes owned 1,200 acres of land whereon he resided, slaves, etc., worth in all from $15,000 to $20,000, and in the then currency much more; the property in dispute was worth from $6,000 to $7,000; he was prosperous and owed no debt of importance except to James M. Jones for purchase of slaves, which would have been paid, but Jones would not take the then currency in Georgia; that besides he did not owe over $300; that B. B. Barnes was then living with his second wife, the defendants being the children of the first wife; that he had "acquired some negro slaves by his last wife that were secured to her separate use, of which her children would get the benefit," and this deed was made because this was only "a suitable provision for defendants as a part of his children," . . . . "as a provision for them out of his estate, and to equalize them with what his wife, children and himself would have of the balance of his estate, including his wife's separate estate—after the payment of all his debts—with no intent to commit any fraud on any one, nor to hinder, delay or defeat any creditor—such a supposition could not be entertained for an instant, considering his condition as aforesaid, and his perfect ability to pay every dollar that he owed at that time, with a large balance of property for the balance of the family." (R. 9 and 10.)

Further, that the property, without this in dispute, "was in excess of what he owed to everybody, and even at the low prices the said property sold under a forced sale, at most unfavorable time, with the liberal homestead exemption, far in excess of his debts, and that they did not pay his debts, is to be attributed to the extraordinary ex-

penses and charges made on said estate in the course of its administration, to which defendants respectfully invite your Honor's attention, as the complainant has referred to and made the same part of his complaint." (R. 10 and 11, part 13.) (Parenthetically, it may be remarked that there is no allusion to such expenses in the bill.)

The answer further set up that Andrew J. Barnes "as an act of ownership," on the 19th of January, 1886, insured said mill building for $3,500 for one year, and the policy was attached as an exhibit to the bill. (R. 11, part 14).

Paragraphs 14 to 22, both inclusive, were as to the statute of limitations set up by the bill, and are sufficiently stated in brief for appellants. (R. 11, 12, 13, 14, 15.)

Part 16th set up that Collier dismissed his petition for want of jurisdiction, but upon condition that that should not prejudice appellants, and that he would at once file this bill. (R. 13.)

Paragraph 23 asked for mesne profits against the assignee in bankruptcy for the use of said premises. (R. 15.)

Paragraph 24 said the deed was not recorded in Houston county until 30th of September, 1874, and then only "on account of hearing that the said complainant was endeavoring to administer it as assets of B. B. Barnes. It has not been recorded there earlier for the reasons already stated, and for no others. It being considered that a record of it, a sort of voluntary deed, in the county of the residence of the maker, and wherein a part of the lands conveyed in the deed were situate." (R. 16, part 23, and R. 26, *date of record.*)

The exhibits were as follows: Two extracts from tax books of Houston county, showing that in 1864 "Barnes, A. J., ag't for his brothers and sisters," was taxed on "Total No. of acres 750. Dist. 9. Aggregate value of land

$15,000," and on nothing else; and the same for 1886, except the value then was $3,750. (R. 16, 17.)

Said policy of insurance, from 19th January, 1866, to 19th January, 1867, for $125.50, insuring $1,500 on grist mill, $1,500 on carding machine, and $500 on rice mill, the policy being to A. J. Barnes, and the property being called his, "all known as Barnes' mill." It was made at Fort Valley, in Houston county. (R. 17.)

The bankrupt proceedings were also exhibited to show petition to sell this land, response thereto, etc. (R. 19–25, inclusive.)

The deed exhibited was made in Crawford, dated 25th September, 1863, and was in usual form, between B. B. Barnes and Moses, John and Benjamin Barnes and Patience Lightfoot of ———, Texas, and Andrew J. Barnes, Sarah Vinson, Martha Cowart, Eliza A. Adams and Remillison Barnes, of "the county and State aforesaid." Its expressed consideration was $10,000. It conveyed 708½ acres of land, to-wit, "Lot No. 197, part of said lot lying in Crawford and part in Houston county;" "50 acres of No. 196, northeast corner of Mossy creek, being the line 100 acres;" west ½ of No. 219, No. 220; south half of 221; 50 acres, more or less, of No. 231, etc., "all said land being and lying in the sixth district of Houston county, with the exception of 50 acres of 196 and the northwest —— of lot 157, which are in the sixth district of Crawford county." (No. 157 seems intended for 197.) The verbiage is quite obscure. It is 197 in the decree. The deed was attested by D. G. John, W. G. Vinson, and J. D. Hartley, J. P. Recorded in Crawford county 26th March, 1864, and in Houston county 30th September, 1874. (R. 25, 26.)

On the 12th May, 1881, these appellants filed their cross-bill against Collier, assignee, setting up their claim

and asking for mill property and possession. (R. 28 *et seq.*)

The exceptions to the answer and to the cross-bill, demurrers, etc., from pages 27 to 40, inclusive, need not be noticed.

By consent the evidence taken on the petition for sale in bankruptcy was used in this cause. The record does not show that any evidence was admitted over objection. On the 25th of November, 1882, a decree was rendered by Don N. Pardee, Circuit Judge, decreeing that "said deed, so far as it affects the rights of the creditors of said B. B. Barnes, bankrupt, is null and void of effect," and ordering the assignee to sell the lands and distribute the proceeds, dismissing the cross-bill and ordering defendants to pay the costs. (R. 40.)

On the same day defendants petitioned for a re-hearing. In that petition it was said that the Judge held said defendants barred by the statute of limitations in section 5057, R. S. U. S., and that said deed of 25th September, 1863, operated as a will. (But the record does not show on what ground Judge Pardee put his decree.) The petition was allowed to be filed, and sixty days allowed to file briefs. On May 15th, 1883, a re-hearing was refused and an appeal allowed. (R. 41–42.)

The evidence on the trial was substantially as follows:

DELIVERY OF THE DEED.

On the 30th of March, 1880, in Texas, Andrew J. Barnes swore: "The deed was delivered to Andrew J. Barnes and W. G. Vinson by Benjamin B. Barnes the same day the deed was signed, in presence of witnesses named," viz., D. G. John, W. G. Vinson, and J. D. Hartley, J. P. (R. 65–66, Int'ys 1 and 2.) Cross-examined, he said it was delivered "in presence of all the subscribing witnesses" on that day. (R. 67, 1 cross-int'y.)

B. B. Barnes, on 16th April, 1880, in Georgia, testified that the deed was delivered about the date of execution, or a day or two afterwards; that he delivered the deed to Andrew a day or two after it was made, and never saw it afterwards. (R. 77, 7th and 8th int'ys.)

W. G. Vinson said: "My impression is that it was not delivered at that time. . . I could not say positively to whom it was delivered or when." (R. 77–81, 7th int'y and 5th cross-int'y.) On the 16th February, 1878, he swore that he thought grantor delivered deed and "other papers" to Andrew J., but was not positive. (R. 157, 3d int'y.)

D. G. John said none of feoffees were present when the deed was made, as he remembered; grantor took possession of it when signed; there was no delivery, so far as he could recollect. (R. 48, 3d int'y.)

RECORDING DEED.

Andrew J. Barnes swore he had it recorded in Crawford county on the 26th March, 1864. (R. 66, 9th int'y.) In January, 1877, he swore he didn't know who had it recorded. (R. 160, 1st cross-int'y.)

Adams swore he had it recorded in Houston county "under instructions of counsel," 30th September, 1874. (R. 26 and R. 91, 3d int'y.)

DEED OR WILL.

The 3d int'y to W. G. Vinson was: "After the deed was made who took possession of said land? Under what right was such possession taken? Under whom and for whom did such person take and hold the possession of said lands and property described in said deed?" . . . His answer was: "Andrew J. Barnes was in possession of the mill at the time the deed was executed; don't know positively, but think it was for the old man's benefit during

his lifetime." (R. 127, 3d int'y and answer R. 133, cross-examined), He said he was sent for to write B. B. Barnes' will and did, and that at his suggestion this deed was made to equalize the first set with second set of children. (R. 134, 2d cross-int'y.) He had sworn in 1878: "I think that B. B. Barnes delivered the deed to A. J. Barnes with the will and other papers at the time of executing the deed, but I am not positive." (R. 157.) In January, 1877, A. J. Barnes was asked: 1st Cross-interrogatory. "Who had possession of the deed inquired about when you left Georgia in the winter of 1866? In whose possession had it been before that time? Who had it recorded in Crawford county?" And answered as follows: To 1st cross-interrogatory: "I do not know whose possession it had been in; my & W. G. Vinson's, who were executors of the will of Benjamin B. Barnes that was written and bears same date with deed; I don't know who had it recorded." (R. 160.)

B. B. Barnes swore it was not to operate as a will. (R. 147, 8th int'y and 2d cross-int'y.)

POSSESSION.

That there was absolutely no change in the possession or control of said property, and that B. B. Barnes received the rents, issues and profits after the same as before the deed was made, is abundantly shown in the record at pages 53, 57, 66, 67, 81, 82, 84, 85, 89, 123, 132, 147, 150, 156.

True, B. B. Barnes swore, January 2d, 1877, "that Andrew J. was in possession as his agent before the deed and remained in as agent of feoffors thereafter until he went to Texas, and then turned it over to Wright without grantor's approbation or consent, and denied receiving the profits of the mills or land. (R. 147, 8th int'y and 2d cross-int'y.)

In 1883 Andrew J. Barnes testified that while in possession of said premises, "by agreement made by the parties named in deed, I accounted to Benjamin B. Barnes for rents of said property, about $1,000 a year." (R. 61, 4th int'y and 6th answer.) And to 2d cross-int'y he answered: "I was in possession of said property for six months prior to the time that said deed was made, under the agreement that said deed would be made. There was no visible change, as I felt as great an interest in my brothers' and sisters' welfare as I had heretofore in my father's." (R. 67.)

The evidence as to Wright, Wm. Thomas, Owens, Henry Estes, Joseph Vinson and Lucius Evans, the successive persons in possession, showed that they were all tenants of B. B. Barnes, and that he got profits of mills and lands. (R. 85, 124, 151, 172.)

B. B. Barnes, on the 16th of April, 1880, testified: "I accounted to Remillison Adams, to John D. Adams for his wife, to Martha and all the rest for the rents of the land and mills. I can't remember how much I paid over to them, nor for what years. I paid them along as I could get it. I did not pay them much. I spent a good deal of money out of the proceeds of the mill keeping it in repair." (R. 79, 16th int'y.)

John D. Adams at same time testified: "He accounted to me for my wife for rent of said lands and mills, and he paid me rent for Remillison Adams and Martha Cowart. I do not recollect the amounts. I think they were small. I think one payment was for 1869 or 1870, and about a year or a year-and-a-half after that he paid the other." (R. 79.)

Remillison R. Adams at same time testified: "He sent me $150 for my share of mill rent in 1870. This was all I got from him. He said it was the mill money. I suppose it was the rent." (R. 79.)

Andrew J. testified: "There has been no accounting to me for rents since I left (in December, 1866). As to the balance of the parties named in the deed, I do not know." (R. 66, 7th int'y.)

JONES' DEBT.

The testimony of J. M. Jones, at page 137 of the printed record, is uncontradicted, and shows the nature, etc., of his antecedent debt. It was this:

"1. To the first direct interrogatory he answers: I was the executor of James S. Bealle, who died in Dooly county the twenty-eighth day of November, 1858. After selling his plantation and personal property, I proceeded, on the 3rd day of January, 1860, to sell his negroes at the court-house door in Vienna, Dooly county, Georgia. Benjamin B. Barnes was there and bought six slaves for the sum of 4,686 dollars, for which I received his note, payable January 1st, 1861, with interest from date, with Andrew J. Barnes and Robert A. Vinson as security, for which slaves I gave said Benjamin B. Barnes a bill of sale, without warranting them to be slaves for life. On the 2nd day of March, 1861, said Barnes paid me $1,000, and on the thirtieth day of April, 1862, he paid me 600 dollars in Confederate money, which sums were credited on the note at the time they were paid, which left due on said note (3,086) three thousand and eighty six dollars besides interest, which note was afterwards retained by me as part payment of a debt James S. Bealle, the testator, was owing me at the time of his death. I brought suit on the note in the year 1866, and at the September term of Crawford Superior Court, to-wit, on the 4th day of September, 1866, I obtained a judgment in my favor against said Benj. B. Barnes, Andrew J. Barnes and William G. Vinson, as administrator of Robert A. Vinson, deceased. Execution was issued thereon on the 28th day

of September, 1866, but under the then existing state of legislation, the stay law and other laws retarding the collection of debts having intervened, it was found impossible to enforce the execution by levy and sale of the defendants' property; yet, so it is. I have seen B. B. Barnes, the defendant, every year since the war and appealed to him for payment, which appeal he has disregarded, knowing that there was no law to make him pay the debt. When the debt was proven in bankruptcy on the 1st day of June, 1874, it amounted to $6,629.17.

To the 6th cross-interrogatory at page 141, Jones testified as to his taking Confederate currency as follows:

"To the 6th cross-interrogatory he answers: I never refused, during the war, to take Confederate money for any debts due me individually, or for any debts due the estate of James S. Bealle, until after July, 1863. Early in that month there were several successive reverses to the armies of the Confederate States, which caused the Confederate currency to depreciate as low as ten cents in the dollar compared with gold. Up to that time I did take for the estate of James S. Bealle $50,000 of Confederate money, all for contracts made before the war, and up to that time, on my individual account, I took the sum of 51,840 dollars of Confederate money, all on contracts made before the war, which turned me out after the war not more than 4,000 dollars in greenbacks, because I would not speculate during the war even to the extent of a dollar. I lost 64 slaves by the war also, belonging to myself and family, owned before the war; this also including their natural increase during the war. I did take 600 dollars of Confederate money on this debt from B. B. Barnes on the 30th of April, 1862, which is duly credited on the note, as heretofore stated in answer to first interrogatory. After this no more Confederate money was

ever tendered me for this debt. In September, 1863, some friend of B. B. Barnes saw me in Macon and said Mr. Barnes would like to pay the note I had against him. I told him he could not pay it in Confederate money, as I had already taken Confederate money enough for contracts made before the war to well-nigh ruin me. I do not recollect who this friend was, but believe now it was Mr. James W. Hardison, a neighbor of Mr. Barnes. At that time Confederate money was not worth more than seven cents on the dollar in gold. About the same time also, as I was passing Fort Valley on the cars, B. B. Barnes saw me while passing and said he would like to pay the debt. I told him I could not take any more Confederate money. He did not tender it either before or after I told him this.

If Mr. Barnes had offered me Confederate money for this debt at any time before July, 1863, I would have taken it. After that time I would not have taken it. I refused it at no time before July, 1863, from any one who offered it."

REASONS FOR DEED.

The reason now given for making the deed was to equalize those children of his first wife with Joseph, Lucinda, Eugenia, Aden and Annie, children of his second wife. (R. 77).

To this purpose for making the deed Andrew J. Barnes swore in March, 1880 (R. p. 66, Int. 11th), B. B. Barnes, grantor, swore 16th April, 1880, and Jno. Adams and Remillison swore that the second wife so said and W. G. Vinson swore that grantor so told him when he made the deed. (R. 78, 9th Int.). Vinson had so sworn 3d January, 1877 (R. 133-134, 1st and 9th Ints.), and on the 16th of February, 1878. (R. 156, 1st Int.).

The property owned by this last set of children, as testified to by Andrew J. Barnes, was "community property in which the parties named in said deed could not share." (R. 66, 11th Int.). B. B. Barnes, grantor, called it "some property through their mother, his second wife, in remainder." (R. 78, 9th Int.). And that is what the second wife told Jno. D. Adams and Remillison Barnes, and what grantor told W. G. Vinson when the deed was made. *Ib.* W. G. Vinson, on 3d January, 1877, had sworn, "I wrote said deed and know it was done for the purpose of making his (B. B. Barnes') first wife's children's share of his property equal to that of his second wife's entailed property" (R. 133, 1st Int.), and "I think the deed was *bona fide* as stated for the purpose as answered above." (*Ib.* 134, 9th Int.). B. B. Barnes had testified 2d January, 1877, that it was "to make my first wife's children equal with my second wife's children." (R. 147, 5th Int.).

In the interrogatories of W. G. Vinson of 16th February, 1878, we find the same thing and the character of the property owned by second wife's children. "He sent for me to write his will and assist him in settling his business; told me that his last set of children had some negro property settled upon them by Aden Hamilton, their grandfather; that he thought he could make both sets equal by giving the mill property to his first set of children. I advised him that if he wished to make it sure he had best make a deed to the mill property to his first set of children and he assented. I then wrote the deed, * * and then wrote his will, and in the will made both sets equal as to the property described in the will." (R. 156, 1st Int.)

B. B. Barnes testified that his wife's negroes were "six or seven" (R. 76, 3d Int.); Andrew J. Barnes said there were but six. (R. 160, Int. 7). There is no evidence of the

value of these six or seven negroes separate from the others except as follows: Andrew J. Barnes swore "the one-half interest in the six negroes was worth $1,500." (R. 160, 7th Int.). Other evidence of their value may be obtained from the fact that Andrew J. at same place said "the fourteen negroes were worth $6,000 gold," speaking of his father's other negroes. J. W. Hardison testified that B. B. Barnes, grantor, had about 25 or 30 negroes —five men and about five women—and the other slaves were children." (R. 123, 1st Int.) A. J. Barnes said "twenty negroes valued at $500 apiece." (R. 67, Int. 13). Grantor said "twenty-six slaves, value $13,000." (R. 146, 3d Int.) His tax return, which by law must be sworn to by him, for 1859 put seventeen negroes at $10,200. (R. 140, Cross Int. 4). W. G. Vincent put his "about twenty-five negroes at $10,000 or more." (R. 133, 7th, Int.). The petition of feoffees to the U. S. Court for possession of the lands granted called these six negroes those "which his then wife owned and held in her own right" (R. 164), and in his schedule B. B. Barnes returned against himself a debt of $2,000, contracted in 1856 "for use of her slaves as a separate estate; property and proceeds of its labor to be hers by a special writing of her father." (R. 172).

The property conveyed by said deed to Andrew J. Barnes and his brothers and sisters of the first marriage in order, as alleged, to equalize them as aforesaid, was 708½ acres of land, all in Houston county except something over fifty acres of two of the lots in Crawford county. (See deed, R. 25.) A. J. Barnes swore that on this land at the date of said deed "was one flouring mill, one rice mill, one set of wool cards and five different sets of tenants' houses, and about five hundaed acres of land under fence, and three hundred of that in a state of culti-

vation. The value of the place was about ten thousand dollars; the value of the annual rents was fifteen hundred dollars. (R. 66, 12th Int.). A. J. Barnes returned this land for taxes as agent for his brothers and sisters in 1864 at $15,000 and in 1866 at $3,750. (R. 16, 17.) In 1866 the mills were insured by him at $3,500. (R. 17).

The consideration expressed in the deed was $10,000. J. W. Hardison estimated all his lands in 1863 at $15,000, but made no separate estimate of this mill property. (R. 123, 1st Int.). B. B. Barnes, grantor, returned these lands for taxes in Houston county in 1870 at $4,285 and the same for 1872, 1873 and 1874.(R. 141, 4th Cross Int.)

ADMISSIONS BESIDES THOSE IN ANSWER.

W. H. Henderson testified that in 1866, just before Andrew J. left for Texas, Mrs. Cowart, his sister, said "she thought the mill and mill lands ought to belong to the older set of children." Andrew replied, "It is in old Ben's possession, and the younger children will reap the benefit of it," that he had worked for his father long enough, and was going to Texas to set up business for himself, etc. "They said the land belonged to old man Barnes." (R. 52, 2nd Int'y.) Andrew's wife was present. (R. 53, 1st cross-int'y.)

Collier, assignee, being in possession applied frequently to B. B. Barnes for the title papers and he promised to give them up, but postponed until he died. (R. 57, 2nd int'y, Collier's evidence.) Jno. D. Adams knew of Collier's expenses on the mill, etc., and raised no objection, and in 1878 B. B. Barnes told him, Collier how he intended to have improved the mills had he remained in possession a year or two longer. *Ib.* 59. J. B. Wright testified that just before leaving for Texas in 1866, Andrew J. said he was going "in order to get a settlement with his

father." (R. 84, 11 int'y), repeated by him at R. 151, 4th int'y.

Wm. Thomas swore Andrew J. told him that his father was largely indebted to him and he was going to Texas to bring the old man to a settlement. (R. 124, 3rd int'y.) As late as the year 1874 his son-in-law L. B. Evans, proved in bankruptcy his claim against B. B. Barnes for attending said mill for that year, nor did Jones hear of any counter-claim to these land until January, 1875. At that date Jno. D. Adams had a conversation about the bankrupt estate, indicating that he regarded the lands in dispute as B. B. Barnes'. –q. v. (R. 139, 3rd int'y. in Jones' evidence.) On the 6th of December, 1866, Jones arrested Andrew J. Barnes on a *casa* for his said debt, and he then said he had no property and procured his release by putting another as security for the debt. B. B. Barnes and his sister, Sarah Vinson, who was going with Andrew J. to Texas, were present. *Ib.* 139, 140. That evidence was taken in January, 1877. In 1883 Andrew J. undertook to explain that by swearing that when he so said, he thought he had traded his part, but on arriving in Texas the trade was not consummated. (R. 68, 6th cross-int'y.) Lastly, B. B. Barnes returned this property as his own in the schedule in 1874. There is no evidence that B. B. Barnes knew of A. J. Barnes giving in this property for taxes as belonging to his brothers and sisters nor of his insuring same in his name.

PROPERTY RESERVED.

At the date of the deed B. B. Barnes lived in Crawford county about two miles from the disputed premises. Besides the property conveyed by said deed, he swore he then had about 1,200 acres of land about one-third of it under cultivation, thirty likely slaves, besides his wife's

six or seven, twelve head of cattle, twelve horses and mules, plantation tools, some little household furniture and a very few small notes and accounts. The land he said was "worth, I reckon, about $10 per acre, and the whole property about $20,000." (R. 76, 3rd int'y.) In 1874 he rated the mules at $100 each, and cows and calves at $5.00. "They told me the law allowed a homestead worth $3,000. The land in the homestead was worth about $1,500. The whole property would have brought $10 per acre had it not been cut up for the homestead." (R. 80, 20th int'y.) B. B. Barnes' estimate in 1874 is shown by two pages of his schedule as follows :

SCHEDULE B 1—As Approved.

In the Matter of BENJAMIN B. BARNES, Bankrupt.

Interest in Lands.

Statement of all real and personal estate and effects whatever which are now in the possession, enjoyment, or under the control of the petitioner, or which are held by any other person in trust for his use, or to the possession or enjoyment of which he is entitled at the date of filing petition.

Particular description of all real estate owned by petitioner, or held by him, and whether under contract or lease.	Encumbrances thereon, if any, and dates thereof.	Statement of all particulars relating thereto.	Estimated value. Dollars.	Cents.
"*Home Place.*" Lot of land, No. 155, containing 202½ acres, more or less, all cleared, and has dwelling and other improvements on it; lot of land, No. 154, containing 202½ acres, more or less, about half cleared; lot of land, No. 156, containing 202½ acres, more or less, all timbered with pine; lot of land, No. 134, containing 200 acres, mostly timbered, having 60 acres cleared; 100 acres of southern half lot of land, No. 133, and 50 acres of the southwest corner of lot of land, No. 135—the whole amounting to 957½ acres, more or less—all in the 6th district of Crawford Co.	No encumbrances, except as set forth in Schedule A 3 by judgment lien of James M. Jones and others.	This land is like most of the up lands of Crawford county, thin, and has been covered with pine. Since labor has left this and adjoining counties it is but little sought after for farming purposes. Land valued at $4.00 per acre.	3,828	00
"*Mill Place.*" Lot of land, No. 197, containing 202½ —, more or less, sixty acres of which is cleared; lot of land, No. 220, containing 202½ acres, more or less, thinly timbered, 10 acres cleared; west half off lot 219, containing 100 acres, more or less, very poor; sixty acres of the east half of lot, No. 196, not timbered and uncultivated; 50 acres of west side of No. 23 uncultivated, scrubby oak.	None but as above set forth and as explained further on in duplicate sheet, Schedule B 1.	This land is further explained, is mostly covered with water, and is worn and washed about the mill-pond.		

Schedule B 1—Continued.

Particular description of all real estate owned by petitioner, or held by him, and whether under contract or lease.	Encumbrances thereon, if any, and dates thereof.	Statement of all particulars relating thereto.	Estimated value	
			Dollars.	Cents.
432. *Lands of "Mill Place" continued.* One hundred acres off of south half of lot of land, No. 221, about 15 acres in cultivation, rest timbered with pine; lot of land, No 228, containing 202½ acres, more or less, known as the Kelly lot, about twenty acres under cultivation, rest timbered with pine; five acres off of lot No. 196 and off of the south side—land is covered with water—containing in all 912½ acres in 6th district of Georgia.	Only by lien of such judgment obtained years back, as set forth in Schedule A 3, by James M. Jones, of Macon, Ga., for the purchase money of slaves, as best can be remembered—purchased in 1860.	This land as described on this sheet is the one on which is located a small grist-mill seat, and at one time was in good condition, but now run down; improvements rotten, land very poor, and necessarily covered with water. Land valued at $5 00 per acre.	4,562	50
"*Ledingham Place.*" Lot of land, No. 194, containing 202½ acres, more or less, most of it open and poor and thin, 150 acres in cultivation; one hundred acres off of lot of land No. 191; most of this is open and 15 acres in cultivation. In the 6th district of Crawford Co. In all, 302½ acres.	This might be considered as above, having no encumbrances but as set forth above.	This land is very thin pine land, much of which labor will not live on, as land is so poor, and valued at $4.00 per acre.	1,210	00
One town lot in city of Fort Valley, known as part of lot No. 19, it being twenty-four feet clear across the lot by broadside to Armory hall.	This lot is claimed by Mr. D. H Houser as in controversy, Mr. Houser being in possession.	This tract of land is not in possession of petitioner, but has owned it some time.	1,000	00
5th. One lot of land, No 235, containing 202½ acres; in the 11th district of Terrell county; all timbered.	None more than above.	This is a wire-grass piece of land; valued at—	510	00

B. B. BARNES, Petitioner.

In answer to said 3rd int'y: W. G. Vinson rated the land at $10 per acre, and the aggregate at "about $20,000 I think in 1866." (R. 76.) In answer to 20th int'y, he put the settlement of 1,200 acres and farm stock "at something like $8,000 or $10,000 if not cut up by the homestead; the homestead, though worth but $1,500 depreciated the land by $2,500. These estimates he made for 1873 and 1874. (R. 80.)

To said 3rd int'y. Jno. D. Adams rated the land at $10 to $12 per acre and said he would have given him $30,000 for all. (R. 76.) To the 20th int'y, he answered that when Barnes went into bankruptcy he had 1,200 acres of land, eight or ten mules, twenty or twenty-five head of cattle, household and kitchen furniture and plantation implements, the "limit value" of all which was $10,000 or $12,000. He doubled if the homestead were worth $1,500. If not cut up by homestead he thought the land worth $9,000. (R. 80.)

J. W. Hardison testified that the about 1,000 acres in home-place, and the 708½ acres in mill place, were worth $15,000, he thought, in 1863 or about six dollars per acre in 1860–61–62 and 63. He thought the mill place, including mill, was worth in 1860–61–62 and 63, $5 per acre. (R. 123 1st int'y and 2nd and 3rd cross-int'ys.)

Wm. Thomas rated the home-place at $7 or $8 per acre in 1860–61–62 and 63. (R. 124, 1st cross-int'y.) James Taylor put the home-place at $6 per acre for 950 acres, and the mill-place, including the mills, at $4 per acre. (R. 126, 1st and 2nd cross-int'ys.)

Wm. G. Vincent estimated the home-place at 1,200 or 1.500 acres, worth about $12,000. Negroes $10,000 and all other property at $1,000. (R. 133, 7th int'y.)

Andrew J. Barnes, in March, 1880, swore B. B. Barnes

other lands were 1,012½ acres in Crawford "valued at $10,000," twenty negroes valued at $500 apiece and about $2,000 of personal property. (R. 67, 13th int'y.) In his int'ys of January, 1867, he put the fourteen slaves at "six thousand dollars gold," the land at the same figure and the personalty at $2,500. (R. 160, 7th int'y.)

J. M. Jones testified that in 1859 Barnes, the grantor, returned 2,057 acres of land in Crawford, Terrell and Dooly counties at $15,400, seventeen negroes at $10,200 and all other property $1,541. In 1868 he returned his 1,260 acres of land in Crawford county at $5,040 and all other property at $1,629, and with some variations Mr. Barnes returned the same property for each year till 1874. (R. 140.)

B. B. BARNES' DEBTS.

To J. M. Jones $4,686, with interest from 3rd January, 1860, @ 7 per cent. less payments. (See R. 137, Jones' evidence.)

Due his wife for use of her slaves, say 7 years @ $155 per year (R. 172), $885.

Due Andrew J. Barnes, $———, (R. 124, 3 int'y), other debts about $500. See answer.

PURPOSE TO HINDER JONES' DEBT SHOWN BY SUBSEQUENT FACTS.

B. B. Barnes and Andrew J. Barnes and W. G. Vinson, as administrator of R. A. Vinson, his securities, have not paid the debt. It is now, say $7,500. Barnes went into bankruptcy to get rid of as much of it as he could under advice of Griffin. (R. 138, 79, 17th and 18th int'ys.)

Barnes swore: "I did not go into bankruptcy for the

purpose of defeating J. M. Jones in the collection of his debt; did not intend that he should lose it all." (R. 82, 13th cross int'y.) On the 2nd January, 1877, he had sworn. "To 3rd cross-interrogatory he answers: Live seven miles from Fort Valley now, and resided same distance in 1874; do not think my mind was impaired by strong drink; think my mind is better when half drunk. It was not my sole purpose to defeat Jones' suit in going into bankruptcy. I did have a quarrel with Joel R. Griffin because he told me a lie." (R. 148.)

Hardison testified: "His object in going into bankruptcy was to avoid paying the Madison Jones debt, and to save his property to his family." (R. 123.)

James M. Taylor swore his object was "to save his property, and particularly to avoid paying the Madison Jones debt." (R. 126 top.) B. B. Barnes swore that because Jones levied his *fi. fa.*, he quit giving this property as his own. (R. 79, 17th int'y.)

DILIGENCE.

Jones must have sued early in 1866, at least, to get judgment at September term, 1866. See brief (and R. 137.)

He *casaed* A. J. Barnes when he was leaving for Texas in December, 1866. (R. 139, bottom.) He levied his *fi. fa.* (R. 79, int'y 17th.) A guess as to the date of the levy may be made from Wright's evidence. (R. 123, top.)

BRIEF.

1. Not having been in the cause below, I know not what was done below except by the record; nor will this court hear any suggestions as to what "efforts" were made below to sustain the bill; nor what was "seriously disputed or denied on the trial" there, not apparent on the record. See 3rd and 5th points in brief for appellants.

2. The adjudication in bankruptcy cannot be collaterally attacked by evidence of weak mind in bankrupt.

3. But his weak-mindedness is valuable to us to show that his evidence as to the fairness of this deed, etc., is weak.

4. B. B. Barnes, A. J. Barnes and W. G. Vincent are all defendants on Jones' judgment, all interested in defeating its lien. This goes to their credit.

STATUTE OF LIMITATIONS.

5. (a) As to statute of limitations, §5057, R. S. U. S. Norton *vs.* DeLa Villebenoe. 1 Woods', R. 163. Bailey *vs.* Glover, 21 Wall, 342. Conant's case, 5 Blatchford, 54.

(b) The court cannot make exceptions to the statute. Friedlander & Girson, 9. Bkr. Reg., 335. McIon *vs.* Ragan, 2 Wheat 29. Bank of Ala. *vs.* Dalton, 9 Wheat, 523, 528, 529. Bacon *vs.* Howard, 20 Howard, 22. Baubien *vs.* Beaubien, 23 Howard, 198, 208.

(c) The Bankrupt Court had no jurisdiction to settle this controversy upon petition or by rule against either party. A bill in equity was needed. Jurisdiction, R. S. §§4972, 4979. Smith *vs.* Mason, 14 Wall., 419. Marshall *vs.* Knox, 16 Wall., 557. Mursh *vs.* Armstrong, 4 Bkr. Reg., 125. Rogers *vs.* Vinson, 6 Bkr., Reg. 246.

(d) If petitions were without jurisdiction, they cannot avail to avoid the statute of limitations. Williams *vs.* Wardlaw, 46 Ga. R., 126. Gray *vs.* Hodge, 50 Ga. R., 262. Edwards *vs.* Ross, 58 Ga. R., 147. Henderson *vs.* Griffin, 5 Peters, 151.

(e) Nor will this court treat this bill as but a continuation of the former proceedings. Clark *vs.* Hackett, 1 Clifford, 270, 282. The statute bars alike at law and in equity. Barley *vs.* Weir, 12 Bkr. Reg., 24. Comeggs *vs.* McCord, 11 Ala., 392. Lathrop *vs.* Drake, 30 Leg. Intel'r, 141. Bump Bkr, 8th ed., 543, 5057.

(f) Dismissal of petition, etc., "without prejudice," cannot help appellants. Walden *vs.* Bodley, 14 Peters, 156, 161. Hughes *vs.* U. S., 4 Wall., 232 (2). Durant *vs.* Essex Co., 7 Wall., 107 (2). Creighton *vs.* Kerr, 20 Wall., 8, 12.

(g) The suggestion of fraud (R. 14), to-wit, that to allow this plea of statute of limitations to prevail would be to allow assignee to practice a fraud, cannot avail as an exception to the statute. The assignee is charged with no wrong or deceit. Beaubien *vs.* Beaubien, 23 Howard, 208. Bailey *vs.* Glover, 21 Wall R. 342. Gifford *vs.* Helme, 98 U. S. R. 248.

(h) Defendants did not set up the statute of limitatins by demurrer, plea or answer. Story's Eq. Pl., §§503, 506, 748, 751, 747-749. Essay on Limitations 15 and cases cited.

6. Contracts to pay for slaves in Georgia in 1860 valid and may yet be enforced. White *vs.* Hart, 13 Wall., 647. Boyce *vs.* Tabb, 18 Wall., 546.

7. Save A. J. Barnes, son of grantor, none of the beneficiaries of the deed of 1863 testify that they knew of its existence till he left for Texas, and none then but John G. Adams and wife. None testify as to any agreement about possession, rents, record of deed, taxes, etc.,

except them and Remillison. Nobody testified that B. B. Barnes, or any but A. J. Barnes, knew of record of the deed or of A. J. Barnes' insuring the property or giving in the same for taxes. Silence is evidence against them. Callahan *vs.* Statham, 23 Howard 477.

Withholding evidence. 3 Phil. Ev. (Pt. 1st C. and H. notes), 456. Best on Presumptions, 79, 81, 172, Rule 5.

Omission to explain. 3 Phil. on Ev., (1st part, C. and H. notes), 473.

8. Recording a deed is only *prima facie* evidence of delivery, even when done by grantor or his direction. Wellborn *vs.* Weaver, 17 Ga. R. 267. (13.)

9. Creditors are not estopped to deny the delivery, and assignee in bankruptcy acts for them.

DEED OR WILL.

10. (a) If A. J. Barnes took this deed to hold until his father's death and then, and not before, have operation, it was a will and must be so proved to convey title. Wellborn *vs.* Weaver, 17th Ga., R. 267, (5, 9, 13, 14, 15).

(b) Two witnesses were sufficient for a deed. Code of 1867, §2648. Wills as to realty must have "three or more competent witnesses." Code of 1867, §2379. This deed had three. If this deed was intended as a will, then the purpose thereby "to equalize" defendants with second set of children entitled to remainder in their mother's slaves was sensible; otherwise not. And so with other evidence.

RECORDING DEED.

11. "Every deed conveying land shall be recorded in the office of the clerk of the Superior Court of the county

where the land lies within one year from the date of such deed." Code of 1867, §2663. It may be recorded later, but loses priority as against later deed by grantor to grantee ignorant of first deed. *Ib.* Irregular record, worthless. Rushin *vs.* Shields & Ball, 11 Ga. R. 636, (3.) This is in law an effort to conceal by withholding from record in proper place.

FRAUD.

12. The Code of Ga. of 1867, in force since 1st January, 1863, declared "The following acts by debtors shall be fraudulent in law against creditors, and as to them, null and void, viz., * * * * * "(1.) where any benefit is reserved to the assignor." * * * *

(2) "Every conveyance of real or personal estate by writing or otherwise * * * * * * * had or made with intention to delay or defraud creditors, and such intention known to the party taking; a *bona fide* transaction on a valuable consideration and without notice or grounds for reasonable suspicion shall be valid."

(3) "Every voluntary deed or conveyance not for a valuable consideration made by a debtor insolvent at the time of such conveyance." Code of 1867, §1942, part 2, or §1954 of Code of 1863, or §1952 of Code of 1882.

Section 2620, Code of 1867, declared "an insolvent person cannot make a valid gift to the injury of his existing creditors." * * * * * That was §2619 of Code of 1863, and is §2662 of Code of 1882.

They are but codifications of Supreme Court decisions in Georgia which were codified under Act of 9th December, 1858. Acts 1858.

If purpose be to hinder or delay creditors, void. Peck *vs.* Land, 2st Ga. R. (1847). Settlement on wife and children pending suit to avoid the judgment, void without notice to grantees. Wise *vs.* Moore, 31 Ga. R., 148.

1.8.12, 14.15.16.17

Such possession unexplained evidence of fraud. Fleming *vs.* Townsend, 6 Ga. R., 105 (1). 13th Elizabeth, *Ib.* Carter *vs.* Stanford, 8 Ga. R., 49 (2). Colquitt *vs.* Thomas, 8 Ga. R., 274 (7). Perkins *vs.* Patten, 10 Ga. R., 242. Scott *vs.* Winship, 20 Ga. R., 429. In this court, Callan *vs.* Statham, 23 Howard, 477. Lukins *vs.* Aird, 6 Wall., 78.

13. "Insolvent" defined. Toof *vs.* Martin, 13 Wall., 47. Buchanan *vs.* Smith, 16 Wall., 277. Dutcher *vs.* Wright, 94 U. S., 557.

14. "Evidence of fraud." Possession after deed made. Peck *vs.* Land, 2 Ga. R., 1 (2); also 4 Ga., 85; 6th, 105; 8th, 50 and 275; 10th, 243.

VOLUNTARY DEED, WHEN VOID AS TO EXISTING CREDITORS.

15. See Clayton *vs.* Brown in 17th Ga. R., 222, and again in 30th Ga. R., 495. Settlement on wife and children. Weed *vs.* Davis, 25 Ga. R., 684, declares such gifts presumptively fraudulent as against existing creditors, requiring to be rebutted by evidence. Such transactions "to the prejudice of the creditors are to be scanned closely and their *bona fides* must be clearly established." Booher *vs.* Worrill, 57 Ga. R., 235. So, "if creditors are likely to suffer." Thompson *vs.* Feagin, 60 Ga. R., 82 (3).

16. The cases in the Supreme Court of U. S. on this subject are: Sexton *vs.* Wheaton, 8 Wheaton, 242; Hinde's, lessee, *vs.* Longworth, 11 Wheaton, 199. There it was held in 1826. "A voluntary deed is void as to antecedent, but not as to subsequent creditors," under 13th Elizabeth.

Venable & McDonald *vs.* Bk. U. S. (1829), 2 Peters 120, last paragraph.

In 1851, Parish *vs.* Murphree. 13 Howard, 93, 99, 100.

In 1857, Hudgins *vs.* Kemp. 20 Howard, 45, 52.

In 1857, Warner *vs.* Norton. 20 Howard, 448.

In 1859, responsive answer "overcome by suspicion." Callon *vs.* Stratham. 23 Howard, 477. Here there was no sworn answer.

In 1873, voluntary settlement of $7,000 out of $16,132 of property (not cash) and debts, $9,306, void. Kerr *vs.* Smith, 20 Wall, 31. It "embarrassed creditors." *Ib.* 35. Fraud presumed, no matter what was motive. *Ib.*

In 1875, where debtor in 1864 reserved 2½ times as much as would pay his debts, creditor delayed and debtor afterwards honestly failed, etc.; gift good. Loyd *vs.* Fulton, 91 U. S., 480, 485.

In the same year this court decided Smith *vs.* Vodges, assignee, 92, U. S., 183. Things subsequent to the deed were allowed to throw "a backward light" upon the transaction. *Ib.*, 184, bottom. Stress was put upon there being when the deed was made, "no reason to anticipate the reverses which followed." *Ib.*, 186.

After occurrences throw light on the purpose. Cathcart *et al. vs.* Robinson, 5 Peters, 264, 280.

Hinde's, lessee, *vs.* Longworth, 11 Wheat, *supra*, was adopted as the rule in Georgia in 1858 in Weed *vs.* Davis. 25 Ga. R., 686.

This decision of Weed *vs.* Davis controls here. Olcott *vs.* Bynum *et al.*, 17 Wall 44, and Loyd *vs.* Fulton, 91 U. S., 485.

In this last case this court held that "prior indebtedness is only presumptive and not conclusive proof of fraud and this presumption may be explained and rebutted. * * * Every case depends upon its circumstances, and is to be carefully scrutinized. But the vital question is always the good faith of the transaction." And see the cases

there cited of Van Wyck *vs.* Seward, 18 Wend. R., 398 to 402.

LEGISLATION, ETC., DURING THE WAR.

17 (a.) The situation on September 25th, 1863, may be understood by recalling certain proclamations and statutes.

On July 1st, 1862, the President of the U. S. proclaimed Georgia and certain other States to be in rebellion against the U. S. 12th U. S. Statutes, 1266. The U. S. and the Southern Confederacy had then been at war for a year, all Southern ports were blockaded, etc. The proclamation of 19th May, 1862, while it declared Maj. Gen. Hunter's proclamation of freedom to slaves in Georgia, etc., void, stated practically that they must be free and paid for by State co-operation or probably by some harsher method without compensation. *Ib.*, 1204. The proclamation of 22nd Sept. 1862, proclaimed all slaves in Georgia free after 1st July 1863, without compensation save the hope thereof to "loyal" persons after peace. *Ib.* 1267–8. By Act of 17th July, 1862, slaves were to be armed. 12 U. S. Statutes, 592 §11. Slaves in Georgia on 25th September, 1863, were worthless unless the Confederacy should be established in spite of the then apparently hopeless condition of its cause.

The value of lands and all other agricultural property in Georgia must be greatly decreased by the freedom of the slaves and disorganization of labor.

(b.) The currency of the South was, in September, 1863, worth but one-tenth or one-fourteenth of gold. (R. 141, 6 int'y.) Barber's Table of Confederate Money. 34 Ga. R., 487. In 1860, over the Governor's veto, a law was made allowing all banks to suspend, and preventing the collection of debts by *fi. fa.*

or *ca. sa.*, except when defendant was removing from the State, etc., until the first of December, 1861. (Acts of 1860, pp. 21 and 22.) That was continued in force until January, 1864 (Acts of 1862, p. 41), and then until January, 1865 (Acts of 1863–4, p. 13), and this last Act was extended "during the continuance of the (then) present war," but "not to apply to defendants not in the army of the Confederate States, when plaintiffs are willing to take Confederate money." Act of 9th March, 1865. (Acts 1865, p. 45.) The war was held to have closed before 19th October, 1865. Armstrong *vs.* Jones, 34 Ga. R., 309 (at June term, 1866.) In March, 1866, another law was passed over the Governor's veto, "that there shall be no levy or sale of property of defendants in this State under any execution founded on any judgment, order or decree of any court, heretofore or hereafter to be rendered, upon any contract or liability incurred prior to the 1st June, 1865," provided defendants paid one-fourth each year in four years from the 1st January, 1866; such levies, except as against absconding defendants, made plaintiffs and sheriffs trespassers, liable in damages for not less than the amount of the judgment. Acts of 1866, 241, 242.

That law was held to be unconstitutional, because impairing the obligation of contracts, in December term, 1867, of the Supreme Court of Georgia by a divided court. Aycock *vs.* Martin, 37 Ga. R., 124.

(c.) The Constitution of 1868, in Art. VII., Section 1, declared that "each head of a family, or guardian, or trustee of a family of minor children shall be entitled to a homestead of realty to the value of two thousand dollars in specie, and personal property to the value of one thousand dollars in specie, both to be valued at the time they are set apart. And no court or ministerial officer in

this State shall ever have jurisdiction or authority to enforce any judgment, decree or execution against said property so set apart, including such improvements as may be made thereon from time to time, except for taxes, money borrowed and expended in the improvement of the homestead, or for the purchase money of the same, and for labor done thereon, or material furnished therefor, or removal of incumbranccs thereon." Code of 1873, §5135.

The homestead was declared inoperative on debts older than the Constitution of 1868 by the Supreme Court of Georgia at the July term, 1875. Vandyke *vs.* Kilgo, 54 Ga. R., 551, Pratt *vs.* Atkins, 54 Ga. R., 569.

(d.) As to the currency and how valuations of property were had.

The suspended banks were in November, 1861, authorized to issue change bills. (Acts of 1861, p. —). Those irregularly issued were legalized by Act of December 6th, 1862. (Acts of 1862-63, p. 19). Like change bills were issued by the Western & Atlantic Railroad under an Act of 17th December, 1861, and so legalized under Act of 6th April, 1863. (Acts of 1861, p. 26, and Acts of 1862-63, p. 136).

This road belonged exclusively to the State. By Act of 5th December, 1862, the State itself required its Treasurer and Comptroller-General to prepare and put in circulation "change bills of this state" from $4.00 down to five cents, the aggregate not to exceed one million of dollars. Its third section was "that the said change bills shall be redeemable at the Treasurer's office, at Milledgeville, in Confederate treasury notes, when presented in sums of five dollars or upwards, and that this provision shall be expressed on the face of the change bills." * * * Section 8 was "that it shall be the duty of the Treasurer of

this State to furnish counties, towns and villages, as also private parties, change bills for current bank, Confederate or State treasury notes when desired for change, in such a manner as to distribute the same as nearly as possible all over the State." Section 9 was "that the authority to issue change bills under the provisions of this Act shall cease and determine whenever the banks of this State shall resume specie payment." Section 10 was: "The Treasurer is hereby authorized to use said change bills in payment of any claims against this State." Acts of 1862-63, pp. 20, 21.

In April, 1863, when, according to Barber's table, (34 Ga. R.), *supra*, it took $5 or $6 of Confederate currency to purchase $1 of gold, several such Acts were approved, viz: By Act of 13th April, 1863, fees for dieting white men in jail were raised to $1 per day and for negroes to 75c. per day. Acts of 1863, p. 175. They had been fifty cents for whites and thirty cents for negroes. Code of 1863, §3622.

By Act of 18th April 1863, administrators and all such trustees were authorized "to receive Confederate treasury notes, and State treasury notes, and interest-bearing Confederate notes in payment of claims due, or which may hereafter be due, estates they may respectively represent, any law, usage or custom to the contrary notwithstanding." Acts of 1863, p. 143.

And lastly, by another Act approved the 18th of April, 1863, it was made a felony, punishable by fine from $1,000 to $10,000, and penitentiary imprisonment from one to five years, for any one in this State "to receive, pass or circulate, or to buy or sell, give credit or currency to, in any way or manner, or to offer or propose to do the same, any note or notes, bill or bills, draft or drafts, or any promise or promises to pay of any kind, or of any

paper or papers having the semblance of the same, issued, made or executed by the United States Government, or any state or states composing the same, or any citizen or citizens, corporator (?) or corporations therein." Acts of 1863, p. 179.

(e.) TAX RETURNS.—The laws of Georgia taxed the property of individuals and most corporations at the values fixed on them by the owners in returns made to Tax Receivers subject to correction if made too low.

The following sections of the Code of 1882 show what is material. They are §834: "Returns of other companies and individuals may be made by themselves or agents to the proper Tax Receiver by the first day of July in each year for property held and subject to taxation on the first day of April previously, and payments to the Tax Collector by the first of October in each year." . . . Section 838: "The entry in the digest of the tax-payers' returns shall be *prima facie* evidence of his having taken such oath, and if false, he is guilty of false-swearing and is liable to be indicted and to be punished therefor as prescribed for other cases of false-swearing in the penal Code." That punishment was imprisonment in the penitentiary from three to ten years. *Ib.*, §4463. The form of the tax-payers' oath was prescribed by §764 of the Code of 1863.

By Act of 17th of April, 1863, that oath was amended for the year 1863, so as to make it read: "And the value you have affixed to it is a just and true valuation on the first of April of this year in Confederate Treasury notes," instead of reading, "and that the value you have affixed to it is a just and true valuation, as it now stands stated in said Code." The Act further made one failing to return his property of whatever kind in that currency liable to double tax as a defaulter. Acts of 1863, p. 179.

It was continued by Act of 2nd December, 1863, and 7th March, 1865, for the years 1864 and 1865. Acts of 1865, p. 69.

(f.) As to taxing slaves, see Act of 18th November, 1864. (Acts 1864, p. 22.) It required a schedule of values to be made for slaves classified by ages, etc., by the Inferior Court of each county. And the alleged reason was because the owners did not give them in fairly. See Comptroller-General's report of 1864 and Acts of 1864, pp. 22, 23, 24.

CREDITOR'S DILIGENCE.

18. Jones' judgment was obtained at September term, 1866, of Crawford Superior Court. The terms were held but twice a year and six months apart. Code, 1867, §3173, 3174. Suits had to be brought twenty days before the first term, *Ib.* §3262, and judgment could not be had until the second term. *Ib.* §§3400, 3467. Therefore, his suit must have been filed twenty days before first Monday of March, 1866.

He arrested defendant, A. J. Barnes, by *ca. sa.* in December, 1866. Later, he levied. He has pressed his claim. Upon the decision here depends whether this gift shall defeat his debt.

BILL TO REMOVE A CLOUD.

19. If this deed is void it clouds the assignee's title and should be canceled. 2 Story's Eq. Juris, §§694, 700; Pl. & M. Bk. *vs.* Walker, 7 Ala. R., 946; Thomas *vs.* Reese, 3 Ga. R., 449, 453; Hollingshed *vs.* McKenzie, 8 Ga. R., 459 (3 and 4); Wynne *vs.* Lumpkin, 35 Ga. R., 208 (2); Dart *vs.* Orme, 41 Ga. R., 377–408; Raines *vs.* Dunning, 41 Ga. R., 617 (3).

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